



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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**CITATION of Administrative Rules**

The Iowa Administrative Code shall be cited as (agency identification number) IAC  
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441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication  
date), (page number), (ARC number).

## Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
***Nov. 17***	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
***Dec. 15***	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
23	Friday, April 23, 2004	May 12, 2004
24	Friday, May 7, 2004	May 26, 2004
25	Friday, May 21, 2004	June 9, 2004

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
FROM: Kathleen K. Bates, Iowa Administrative Code Editor  
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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#### ADMINISTRATIVE SERVICES DEPARTMENT[11]

Parking, amend 11—100.1; adopt 11—ch 101; rescind 401—ch 4 IAB 3/31/04 <b>ARC 3247B</b>	Conference Room 04, Level A-South Hoover State Office Bldg. Des Moines, Iowa	April 20, 2004 10:30 a.m.
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#### EDUCATIONAL EXAMINERS BOARD[282]

Driver education teaching endorsement, 14.141(6) IAB 3/31/04 <b>ARC 3256B</b>	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	April 20, 2004 1 p.m.
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#### EDUCATION DEPARTMENT[281]

Vocational rehabilitation services division, 5.3(1), 5.16, ch 56 IAB 3/31/04 <b>ARC 3264B</b> (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 29, 2004 3 p.m.
	West High School 425 E. Ridgeway Ave. Waterloo, Iowa	April 29, 2004 3 p.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	April 29, 2004 3 p.m.
	Louisa Room, Mississippi Bend AEA 729 21st St. Bettendorf, Iowa	April 29, 2004 3 p.m.
	Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	April 29, 2004 3 p.m.
	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	April 29, 2004 3 p.m.
	Room 2, Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	April 29, 2004 3 p.m.
AEA media centers, rescind ch 70 IAB 3/31/04 <b>ARC 3265B</b> (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 22, 2004 12 noon to 1 p.m.
	Louisa Room, Mississippi Bend AEA 729 21st St. Bettendorf, Iowa	April 22, 2004 12 noon to 1 p.m.
	Great River AEA 3601 West Avenue Rd. Burlington, Iowa	April 22, 2004 12 noon to 1 p.m.

**EDUCATION DEPARTMENT[281] (Cont'd)**  
**(ICN Network)**

AEA 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	April 22, 2004 12 noon to 1 p.m.
Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	April 22, 2004 12 noon to 1 p.m.
Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	April 22, 2004 12 noon to 1 p.m.
Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	April 22, 2004 12 noon to 1 p.m.
Keystone AEA 1400 Second St. NW Elkader, Iowa	April 22, 2004 12 noon to 1 p.m.
Room 204, Prairie Lakes AEA 330 Avenue M Fort Dodge, Iowa	April 22, 2004 12 noon to 1 p.m.
Heartland AEA 6500 Corporate Dr. Johnston, Iowa	April 22, 2004 12 noon to 1 p.m.
Southern Prairie AEA 2814 N. Court St. Ottumwa, Iowa	April 22, 2004 12 noon to 1 p.m.
Room 103, AEA 4 1382 Fourth Ave. NE Sioux Center, Iowa	April 22, 2004 12 noon to 1 p.m.
Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	April 22, 2004 12 noon to 1 p.m.
AEA educational services, rescind ch 71 IAB 3/31/04 <b>ARC 3266B</b> <b>(ICN Network)</b>	Second Floor Grimes State Office Bldg. Des Moines, Iowa  April 22, 2004 12 noon to 1 p.m.
Louisa Room, Mississippi Bend AEA 729 21st St. Bettendorf, Iowa	April 22, 2004 12 noon to 1 p.m.
Great River AEA 3601 West Avenue Rd. Burlington, Iowa	April 22, 2004 12 noon to 1 p.m.
AEA 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	April 22, 2004 12 noon to 1 p.m.
Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	April 22, 2004 12 noon to 1 p.m.

**EDUCATION DEPARTMENT[281] (Cont'd)**  
**(ICN Network)**

	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	April 22, 2004 12 noon to 1 p.m.
	Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	April 22, 2004 12 noon to 1 p.m.
	Keystone AEA 1400 Second St. NW Elkader, Iowa	April 22, 2004 12 noon to 1 p.m.
	Room 204, Prairie Lakes AEA 330 Avenue M Fort Dodge, Iowa	April 22, 2004 12 noon to 1 p.m.
	Heartland AEA 6500 Corporate Dr. Johnston, Iowa	April 22, 2004 12 noon to 1 p.m.
	Southern Prairie AEA 2814 N. Court St. Ottumwa, Iowa	April 22, 2004 12 noon to 1 p.m.
	Room 103, AEA 4 1382 Fourth Ave. NE Sioux Center, Iowa	April 22, 2004 12 noon to 1 p.m.
	Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	April 22, 2004 12 noon to 1 p.m.
Student teaching experience, 79.13(2) IAB 3/31/04 <b>ARC 3267B</b>	Conference Room 3 North Grimes State Office Bldg. Des Moines, Iowa	April 27, 2004 2 p.m.

**ELDER AFFAIRS DEPARTMENT[321]**

Elder group homes, ch 29 IAB 4/14/04 <b>ARC 3302B</b> <b>(ICN Network)</b>	Public Library 300 S. Fillmore St. Osceola, Iowa	May 5, 2004 9 a.m.
	Room 105 Clinton Community College - 1 1000 Lincoln Blvd. Clinton, Iowa	May 5, 2004 9 a.m.
	Sixth Floor NW Lucas State Office Bldg. Des Moines, Iowa	May 5, 2004 9 a.m.
	Room 3 West -19C Veterans Administration Medical Ctr. 601 Highway 6 Iowa City, Iowa	May 5, 2004 9 a.m.



**ELDER AFFAIRS DEPARTMENT[321] (Cont'd)**  
**(ICN Network)**

NIACC 500 College Dr. Mason City	May 5, 2004 9 a.m.
AEA 4, North entrance 1382 Fourth Ave. NE Sioux Center, Iowa	May 5, 2004 9 a.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Terms used in determination of PSD permit review, 20.2, 22.4(1), 22.5(1), 22.100, 22.120 IAB 4/14/04 <b>ARC 3280B</b> (See also <b>ARC 3155B</b> , IAB 2/4/04)	Rooms A and B Iowa Bldg. Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	June 2, 2004 1 to 3 p.m.
Nonpublic water supply wells; well contractor certification, amendments to chs 49, 82 IAB 3/17/04 <b>ARC 3223B</b>	Pizza Ranch 1100 W. Main Manchester, Iowa	April 14, 2004 9 a.m.
	Helen Wilson Gallery Public Library 120 E. Main Washington, Iowa	April 15, 2004 9 a.m.
	City Hall 314 E. Maple Centerville, Iowa	April 16, 2004 9 a.m.
Surface water quality criteria, 61.3 IAB 4/14/04 <b>ARC 3282B</b>	City Hall Meeting Room 400 Claiborne Dr. Decorah, Iowa	May 4, 2004 7 p.m.
	Opera House 207 N. Main St. Elkader, Iowa	May 5, 2004 7 p.m.
	Meeting Room A Public Library 123 S. Linn St. (temporary entrance in pedestrian mall) Iowa City, Iowa	May 11, 2004 1 p.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	May 14, 2004 1 p.m.
Iowa land recycling program and response action standards, amendments to ch 137 IAB 4/14/04 <b>ARC 3283B</b>	Conference Room 5W Wallace State Office Bldg. Des Moines, Iowa	May 5, 2004 1:30 p.m.

**HISTORICAL DIVISION[223]**

Description of organization, 1.1 to 1.9 IAB 3/31/04 <b>ARC 3270B</b>	Tone Board Room, Third Floor West Historical Bldg. 600 E. Locust St. Des Moines, Iowa	April 20, 2004 1 to 2 p.m.
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# **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]**

Eligible costs for recovery by wireless service providers, 10.9(3) IAB 3/31/04 <b>ARC 3271B</b> (See also <b>ARC 3272B</b> )	Division Conference Room Hoover State Office Bldg. Des Moines, Iowa	April 27, 2004 1 p.m.
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# **IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**

Employers; employees; covered wages, adopt 495—chs 4 to 6; rescind 581—21.2 to 21.7 IAB 4/14/04 <b>ARC 3295B</b>	7401 Register Dr. Des Moines, Iowa	May 4, 2004 9 a.m.
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# **MEDICAL EXAMINERS BOARD[653]**

Fees, 8.2, 8.4(6), 8.7, 8.12, 8.13, 12.25(1) IAB 4/14/04 <b>ARC 3290B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	May 4, 2004 2 p.m.
Written protocol for pharmacist's delegation of administration of vaccines, 13.3(1) IAB 4/14/04 <b>ARC 3289B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	May 4, 2004 1 p.m.

# **NATURAL RESOURCE COMMISSION[571]**

Mooring of vessels on riparian property of the state of Iowa, 40.49 IAB 3/31/04 <b>ARC 3259B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 20, 2004 9 a.m.
Cabin rental fees, 61.4(1) IAB 3/31/04 <b>ARC 3260B</b>	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 20, 2004 1:30 p.m.
Protection for private landowners that implement conservation measures for endangered and threatened species, 77.4(9) IAB 3/31/04 <b>ARC 3258B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 22, 2004 10 a.m.

# **PROFESSIONAL LICENSURE DIVISION[645]**

Dietetic examiners, 81.4, 81.9, 81.11 to 81.14, 84.1 IAB 3/31/04 <b>ARC 3234B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 20, 2004 10 to 11 a.m.
Massage therapy examiners, 130.4, 130.6, 131.8, 131.11 to 131.13, 132.4, ch 134, 135.1 IAB 3/31/04 <b>ARC 3233B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 20, 2004 9 to 10 a.m.
Athletic training examiners, 351.9, 351.11 to 351.14, 354.1 IAB 4/14/04 <b>ARC 3275B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 4, 2004 9 to 10 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Fire fighter certification, 54.1 to 54.204 IAB 4/14/04 <b>ARC 3294B</b>	Fire Service Training Bureau 3100 Fire Service Rd. Ames, Iowa	June 3, 2004 9:30 a.m.
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**REAL ESTATE COMMISSION[193E]**

Trust accounts and closings, 13.1 IAB 4/14/04 <b>ARC 3277B</b>	Second Floor Conference Room 1920 SE Hulsizer Ankeny, Iowa	May 4, 2004 10 a.m.
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**REGENTS BOARD[681]**

Admission fees for regents universities, 1.1, 1.2, 2.27 IAB 3/31/04 <b>ARC 3262B</b>	11260 Aurora Ave. Urbandale, Iowa	April 20, 2004 3 p.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAPITAL INVESTMENT BOARD, IOWA[123]

CITIZENS’ AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

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**ARC 3302B****ELDER AFFAIRS  
DEPARTMENT[321]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to rescind Chapter 29\*, “Elder Group Homes,” Iowa Administrative Code, and adopt new Chapter 29 with the same title.

The proposed chapter establishes requirements for program certification and standards for elder group homes.

These rules will be subject to waiver at the discretion of the Department in accordance with 321—Chapter 11, “Waivers or Variances from Administrative Rules” (published herein as **ARC 3300B**).

Any interested person may make written suggestions or comments on this proposed amendment prior to May 5, 2004. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; E-mailed to [joel.wulf@iowa.gov](mailto:joel.wulf@iowa.gov); or faxed to (515)242-3300.

There will be a public hearing on May 5, 2004, at 9 a.m. over the Iowa Communications Network, at which time persons may present their views either orally or in writing. Access to the public hearing will be available at the following locations:

Public Library  
300 South Fillmore Street  
Osceola

Clinton Community College-1—Front entrance  
1000 Lincoln Blvd., Room 105  
Clinton

Department of Public Health  
Lucas State Office Building, 6th Floor NW  
Des Moines

Veterans Administration Medical Center  
Main Hospital front entrance; Room 3 West-19C  
(3rd floor, west end)  
601 Highway 6  
Iowa City

Note: Parking is not permitted in the VA lot; use the metered parking on the street.

North Iowa Area Community College  
500 College Drive  
Mason City

Area Education Agency 4, North entrance  
1382 4th Ave NE  
Sioux Center

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

\*See **ARC 3301B** herein.

Any person planning to attend the public hearing and who has special requirements, such as those related to hearing or mobility impairments, should contact the Elder Affairs Department and advise of specific needs.

This amendment is intended to implement Iowa Code Supplement chapter 231B.

The following amendment is proposed.

Rescind 321—Chapter 29 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 29  
ELDER GROUP HOMES**

**321—29.1(231B) Definitions.**

“Ambulatory” means the condition of a tenant who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

“Assessment” means the administration of a standardized tool by an EGH designee to determine appropriate admission qualifications and develop a service plan.

“Assistance” means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall not be construed to mean the tenant has not participated in the task or activity.

“Committee” means a resident advocate committee established by 321—Chapter 9.

“Condition” means a provision attached to a new or existing certification that limits or restricts the scope of the certification or imposes additional requirements on the certificate holder.

“Convenience services” means hotel-type services and may include meals, transportation, laundry and housekeeping provided for the convenience of a tenant.

“Department” means the department of elder affairs or the department’s designee.

“DIA” means the department of inspections and appeals.

“EGH” means an elder group home.

“Elder” means a person 60 years of age or older.

“Elder group home” means a single-family residence that is operated by a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

“Health care professional” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner, licensed through the department of public health.

“Homelike” means an environment that promotes the dignity, security and comfort of tenants through the provision of personalized care and services to encourage independence, choice and decision making by the tenants.

“Household occupant” means a homeowner, a member of the homeowner’s family, a tenant, an on-site tenant manager or a member of the on-site tenant manager’s family.

“Legal representative” means a person appointed by the court to act on behalf of the tenant, or a person acting pursuant to a power of attorney.

“Occupancy agreement” means a written contract entered into between an EGH and a tenant that clearly describes the rights and responsibilities of the EGH and the tenant and other information required by rule. The occupancy agreement may include a separate signed lease and signed service agreement.

“On-site tenant manager” means the person who takes responsibility for all care and ensures that appropriate staffing

## ELDER AFFAIRS DEPARTMENT[321](cont'd)

is provided to tenants on a 24 hours per day, seven days per week basis.

“Personal care” means services that may include bathing, personal hygiene, dressing, grooming, and supervision of self-administered medications. However, “personal care” does not include the administration of medications or the services of a registered nurse or licensed practical nurse.

“Personal care provider” means an individual who, in return for remuneration, assists with the essential activities of daily living which the recipient can perform personally only with difficulty.

“Qualified professional” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling or electrical contractor who furnishes regular service to such equipment.

“Routine” means regular, customary or not occasional or intermittent.

“Self-administration” means a tenant’s taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“Service plan” means the written description of a tenant’s needs and capabilities, including by whom, when and how often care and services will be provided.

“Supervision of self-administered medications” means the verbal reminder or guidance in the identification of the medication and the times and manner of administration. Supervision does not include the placing of the medication internally or externally on the tenant’s body. “Supervision of self-administration” includes activities such as prompting and reminding, opening of containers or packaging at the direction of the tenant, and reading instructions or other label information in order for a tenant to self-administer a medication.

“Tenant” means any person who is receiving room, board, personal care or convenience services for payment of fees in an EGH on a 24 hours per day, seven days per week basis.

“Waiver” means action taken by DIA which suspends in whole or in part the requirements or provisions of a rule as applied to an identified tenant on the basis of that tenant’s particular circumstances.

**321—29.2(231B) Application content and process.** Any entity that meets the definition of an EGH as defined in Iowa Code Supplement section 231B.1(4) must be certified by DIA, except those facilities that are certified or licensed under Iowa Code chapter 135C.

**29.2(1)** Application materials may be obtained by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**29.2(2)** The initial or renewal application for certification shall contain:

a. A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change;

b. A statement affirming that the individuals listed in 29.2(2)“a” have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult or child abuse code in any state;

c. A statement disclosing whether any of the individuals listed in 29.2(2)“a” have or have had an ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, home health agency, or licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect;

d. A copy of the current policy and procedure for evaluation of each tenant, which includes a copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant;

e. Identification of target population;

f. A copy of the current service plan format;

g. If the program contracts for personal care or health-related care services from a certified home health agency, mental health center or a licensed health care facility, a copy of that entity’s current license or certification;

h. The current policy and procedure for addressing medication needs of tenants;

i. The current policy and procedure describing accident and emergency response;

j. A copy of the current tenant occupancy agreement;

k. The current policy and procedure for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

**29.2(3)** An eligible applicant is any for-profit or nonprofit corporation or person that owns a single-family residence.

**29.2(4)** The applicant shall submit one copy of the completed application and associated documentation to DIA at the address stated in subrule 29.2(1) at least 60 calendar days prior to the expected date of beginning operations.

**29.2(5)** The applicant shall notify the state fire marshal of the applicant’s intent to become certified as an EGH at least 60 calendar days prior to the expected date of beginning operations.

**321—29.3(231B) Initial certification process.** DIA shall review the application for completion and compliance with all rules of this chapter. A completed application shall include all necessary documentation including state fire marshal approval. DIA shall notify the applicant of the approval or denial upon receipt of a completed application. The application for an EGH that intends to operate in new construction shall include proof of compliance with all applicable local housing or state building codes. Certification for an EGH, unless suspended or revoked, shall expire at the end of the time period specified in the certificate.

**321—29.4(231B) Renewal of certification.** Certification may be renewed upon application by the owner or operator in accordance with this rule. In order to renew the EGH certification, the applicant must submit:

1. A completed application including all information required by 29.2(2), at least 90 days prior to the expiration of the certification;

2. Documentation by a qualified professional that the following systems have been inspected and found to be maintained in conformance with the manufacturer’s recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial

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light, and ventilation; and, if applicable, garbage disposal, cooking area, laundry and elevators;

3. If the EGH is contracting personal care from a certified home health agency or a licensed health care facility, a copy of that entity's current license or certification;

4. Documentation that all employees have received the two-hour mandatory reporter training on dependent adult abuse and that the EGH has established a policy for reporting abuse allegations and a policy for employee sanctions if allegations are substantiated; and

5. Documentation to reflect any structural or operational changes in the EGH from the information submitted for initial certification or the last renewal, whichever is applicable.

### **321—29.5(231B) Tenant admission requirements.**

**29.5(1)** On-site tenant managers may only admit or continue to care for tenants whose service needs may include personal care and supervision of self-administration of medications as defined in this chapter.

**29.5(2)** A tenant may be accepted for residence only if a bedroom and bathroom are available to the tenant from which the unaided tenant is able to travel a normal path to safety.

### **321—29.6(231B) Service plan required.**

**29.6(1)** At the time of admission, the tenant's service plan shall be developed by the EGH or EGH designee in cooperation with the tenant or the tenant's legal representative.

**29.6(2)** The service plan shall be developed from an assessment of the tenant's functional abilities.

**29.6(3)** The service plan shall indicate, at a minimum, the tenant's needs and requirements for assistance, services and care to be provided, and the identity(ies) of the provider(s).

**29.6(4)** The tenant's service plan shall be reviewed for appropriateness as follows:

- a. Based upon the tenant's needs;
- b. At the tenant's, the tenant's legal representative's, or the on-site tenant manager's request;
- c. No less than annually.

### **321—29.7(231B) Occupancy agreement.**

**29.7(1)** Prior to the tenant's taking occupancy, the tenant or tenant's legal representative, if applicable, and the EGH shall enter into and sign an occupancy agreement that clearly describes the rights and responsibilities of the tenant and of the EGH, and shall sign a managed risk policy disclosure statement.

**29.7(2)** The occupancy agreement shall be in 12-point type or larger, and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the tenant or the tenant's legal representative.

**29.7(3)** The written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.
- b. A statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources are accepted by the EGH.
- c. The procedure followed for nonpayment of fees.
- d. Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.
- e. The term of the occupancy agreement.

f. A statement that the EGH must notify the tenant or the tenant's legal representative, as applicable, in writing at least 30 days prior to any change in the occupancy agreement, with the following exceptions. In these instances the notification shall be immediate:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the EGH.

g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer. The internal appeals process provided relative to an involuntary transfer.

i. The program's policies and procedures for addressing grievances between the EGH and the tenant, including grievances relating to transfer and occupancy.

j. A policy regarding discrimination or retaliation against a tenant, tenant's family, or an employee of the EGH who has initiated or participated in any proceeding authorized by this chapter.

k. The emergency response policy.

l. The staffing policy which specifies if the staff is available 24 hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

m. The refund policy.

n. A statement regarding billing and payment procedures.

o. The telephone number for filing a complaint with DIA.

p. The telephone number for the long-term care resident advocate.

q. The telephone number for the elder abuse hotline.

r. A copy of the EGH's statement on tenant rights.

s. A statement that the tenant landlord law applies to the EGH.

**29.7(4)** A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the EGH.

**29.7(5)** The occupancy agreement shall be reviewed and updated as necessary to reflect any change in the services offered and in financial arrangements.

**29.7(6)** A copy of the most current occupancy agreement form shall be made available to the general public upon request. The EGH's basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

**29.7(7)** A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.

### **321—29.8(231B) Waivers of the level of care requirements.**

**29.8(1)** Level of care waivers. Requests for waiver of the level of care requirements for a tenant of an EGH shall be submitted on a form and in a manner designated by DIA and in accordance with this rule. When it becomes apparent to the EGH's staff that a tenant will need licensed nursing activities or hospice care, a request for waiver of level of care shall



## ELDER AFFAIRS DEPARTMENT[321](cont'd)

be submitted by the tenant, tenant's legal representative, homeowner or on-site tenant manager. DIA may grant a waiver for an individual tenant on a time-limited basis.

**29.8(2)** Criteria for level of care waiver. DIA may grant a waiver if an investigation establishes by clear and convincing evidence that the following criteria are met:

- a. It is the informed choice of the tenant or tenant's legal representative to remain in the home; and
- b. The on-site tenant manager is able to provide appropriate care to the tenant in addition to the care of the other tenants, or that additional staff is available or can be obtained to meet the tenant's care needs; and
- c. The waiver shall not jeopardize the care, health, safety or welfare of the tenant or others.

**29.8(3)** DIA shall:

- a. Review and respond in writing to waiver requests within two working days of receipt of necessary documentation.
- b. Monitor regularly, for the duration of the waiver, the tenant's medical and functional information for continued appropriateness of the waiver.

**29.8(4)** The waiver applicant shall notify DIA within five calendar days of any changes in the condition of the tenant as provided in the approved waiver request.

**321—29.9(231B) Resident advocate committees.** Resident advocate committees for EGHs shall be governed by 321—Chapter 9 unless otherwise required in this chapter.

**29.9(1)** Committee placement. A resident advocate committee shall be established by the department for each EGH certified in accordance with this chapter.

**29.9(2)** Committee visitations. The committee shall visit the EGH assigned to it within one month of the admission of the first tenant and a minimum of once a year thereafter.

**321—29.10(231B) Requirements and qualifications for staff.**

**29.10(1)** The EGH shall be staffed by an on-site tenant manager 24 hours per day, seven days per week.

**29.10(2)** Sufficient trained staff shall be available at all times to fully meet tenants' identified needs.

**29.10(3)** All personnel of the EGH shall be able to implement the EGH's accident, fire safety and emergency procedures.

**29.10(4)** Personal care providers shall have completed, at a minimum, a home health aide training program that meets the requirements and criteria established in 641—Chapter 80.

**29.10(5)** The on-site tenant manager shall maintain proof of training of EGH staff for review as required by these rules.

**29.10(6)** All staff shall sign a statement disclosing whether the staff member has or has had ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare program; or has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

**29.10(7)** The EGH shall conduct, on each employee hired after July 1, 1998, a criminal background check including a dependent adult and child abuse record check in accordance with Iowa Code section 135C.33.

**29.10(8)** Any person refusing to sign the statement required in 29.10(6) or subsequently found to have provided false information on said statement shall not serve on staff.

**321—29.11(231B) Tenant documents.**

**29.11(1)** A file shall be maintained for each tenant at the EGH and shall contain:

- a. An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of occupancy; names, addresses and telephone numbers of health care professional(s) and tenant's legal representative; tenant's diagnosis (if applicable); and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;
- b. Application forms;
- c. Initial evaluation and updates;
- d. Nutritional assessment as necessary;
- e. Initial individual service plan and updates;
- f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;
- g. Signed authorization for the tenant to receive emergency medical care if necessary;
- h. When appropriate, medical information sheet, documentation of health care professionals' order, treatment, therapy, medication and service notes;
- i. Advance health care directives as applicable;
- j. A complete copy of the tenant's occupancy agreement, including any updates;
- k. Written acknowledgement that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
- l. A copy of the tenant's power of attorney, guardianship, conservatorship letters of appointment or other documentation of a legal representative as necessary.

**29.11(2)** The EGH records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant before the records are destroyed.

**29.11(3)** All records shall be protected from loss, damage and unauthorized use.

**321—29.12(231B) EGH facility standards.**

**29.12(1)** The EGH shall be safe, sanitary, well-ventilated, properly lighted, heated, and cooled, and, if constructed or substantially remodeled on or after January 1, 1994, shall comply with all applicable state and local housing ordinances for family residences and with fire safety rules promulgated by the state fire marshal.

**29.12(2)** If the structure existed before January 1, 1994, and is unchanged, the EGH shall meet the fire safety rules promulgated by the state fire marshal and the following standards:

- a. General.
  - (1) The home, furnishings and fixtures shall be clean, in good repair and appropriate for the tenants.
  - (2) Stairways shall have handrails of a circumference, length, texture, strength and stability that can reasonably be expected to provide tenant support.
  - (3) A functioning light shall be provided in each room, stairway and exit; incandescent light bulbs shall be protected with appropriate covers.
  - (4) The yard, fire exits and exterior steps shall be kept free of obstructions, accessible and appropriate to the condition of the tenants.
  - (5) There shall be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the tenants

## ELDER AFFAIRS DEPARTMENT[321](cont'd)

at one time; common space shall not be located in the basement or garage, unless such space was constructed for that purpose. Additional common living space may be required if wheelchairs, walkers or other durable medical equipment are to be accommodated.

(6) Interior and exterior doorways used by tenants shall be wide enough to accommodate wheelchairs and walkers if tenants with impaired mobility are in residence.

(7) Hot and cold water at each tub, shower, and sink shall be in sufficient supply to meet the needs of the tenants and staff.

(8) Grab bars shall be present for each toilet, tub and shower. Access to toilet and bathing facilities shall be barrier-free. Toilet and bathing facilities shall provide individual privacy.

(9) A telephone shall be available and accessible for tenants' use and located in a reasonable accommodation for privacy for all calls.

b. Sanitation requirements.

(1) A public water supply shall be utilized if available. If a nonmunicipal water source is used, the homeowner or the person currently in charge of the EGH must show documentation from the state laboratory that the water supply is potable and is tested as required by the rules of the environmental protection commission of the department of natural resources.

(2) Septic tanks or other nonmunicipal sewage disposal systems shall be in good working order.

(3) Garbage and refuse shall be suitably stored or disposed of by a sanitation company providing service in the area.

(4) If laundry service is provided, soiled linens and clothing shall be stored in containers in an area separate from food storage, kitchen and dining areas.

(5) Sanitation for household pets and other domestic animals shall be adequate to prevent health and safety hazards.

(6) There shall be adequate control of insects and rodents.

(7) Reasonable and prudent precautions for infection control will be used in personal care, food preparation and meal service.

(8) There shall be at least one toilet and one sink for every four EGH household occupants (including tenants and on-site tenant manager), and at least one tub or shower for each six household occupants with a minimum of one sink and toilet on each floor occupied by tenants. A sink shall be located near each toilet.

c. Bedroom requirements. Each tenant bedroom shall:

(1) Have a door that opens directly to a hallway or common use area without passage through another bedroom or common bathroom;

(2) Be adequately ventilated, heated, cooled and lighted;

(3) Have at least 70 square feet of usable floor space, excluding any area where a sloped ceiling does not allow a person to stand upright;

(4) Provide individual privacy and be occupied by one tenant, unless an alternative arrangement is agreed to by the tenant, or the tenant's legal representative, in the occupancy agreement;

(5) Be on ground level for tenants with impaired mobility;

(6) Be in close enough proximity to the on-site tenant manager to ensure that tenants can alert the on-site tenant manager to nighttime needs or emergencies, or be equipped with a call system.

Areas that are designated as living areas or as tenant bedrooms shall not be used by on-site tenant managers, their

family members, convenience service providers or personal care providers.

d. Safety.

(1) All combustion appliances shall be used and maintained properly, and shall be inspected annually by a qualified technician for carbon monoxide emissions and any other hazards to health and safety;

(2) Extension cord wiring shall not be used in place of permanent wiring.

**321—29.13(231B) Complaint procedure.** Any person with concerns regarding the operation and service delivery at an EGH may file a complaint with DIA at the address provided in 321—subrule 29.2(1).

**29.13(1)** A complaint shall include the complainant's name, address, and telephone number and the complainant's relationship to the EGH or tenant. DIA shall act on anonymous complaints unless DIA determines that the complaint is intended to harass the EGH.

**29.13(2)** A complaint shall identify the EGH and shall include the complainant's concerns regarding the home.

**29.13(3)** Upon receipt of a complaint made in accordance with this rule, DIA shall conduct a preliminary review of the complaint. If DIA, upon preliminary review, determines that the complaint is intended to harass the EGH or is without reasonable basis, DIA may dismiss the complaint.

**29.13(4)** If the complaint involves a situation that can reasonably be expected to result in imminent harm, DIA shall make or cause to be made an on-site review of the EGH within 24 hours of receipt of a complaint.

**29.13(5)** Except as provided in 29.13(3) and 29.13(4), DIA shall make or cause to be made an on-site review of the EGH within 20 working days of receipt of a complaint.

**29.13(6)** DIA shall apply a "preponderance of evidence" standard in determining whether or not a complaint is substantiated. Upon conclusion of the investigation, DIA shall promptly notify the complainant and EGH of the results. Notice of results shall include a summary of the complaint(s), the finding(s), and the need for the EGH to submit a plan of correction, if applicable.

**29.13(7)** DIA's decision to dismiss a complaint or its determination that a complaint is not substantiated is a final agency action and is not subject to contested case proceedings, appeal, or judicial review provisions of Iowa Code chapter 17A.

**29.13(8)** When the nature of a complaint is outside DIA's authority, DIA shall forward the complaint or refer the complainant to the appropriate investigatory entity.

**29.13(9)** Complaints may also be filed with the long-term care resident's advocate established in Iowa Code Supplement section 231.42.

**321—29.14(231B) Denial, suspension, or revocation of certification.**

**29.14(1)** DIA shall have the authority to deny, suspend or revoke certification in any case where DIA finds there has been a substantial or repeated failure on the part of the EGH to comply with the requirements of Iowa Code Supplement chapter 231B and this chapter or for any of the following reasons:

a. Cruelty or indifference to EGH tenants.

b. Appropriation or conversion of the property of an EGH tenant without the tenant's or the tenant's legal representative's written consent.

c. Permitting, aiding or abetting any illegal act in Iowa Code Supplement chapter 231B and this chapter.

## ELDER AFFAIRS DEPARTMENT[321](cont'd)

d. Obtaining or attempting to obtain or retain certification by fraudulent means or misrepresentation or by submitting false information.

e. Habitual intoxication or addiction to controlled substances by the owner, on-site tenant manager or other staff of the EGH.

f. Securing the devise or bequest of property owned by a tenant by threats, coercion or undue influence.

g. Any individual who has or has had an ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, a home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare program; or has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

**29.14(2)** When an applicant for certification, an owner or an operator is an entity other than an individual, DIA may deny, suspend, or revoke certification if any person in a position of control or an officer of the entity engages in any act or omission prohibited by Iowa Code Supplement chapter 231B and this chapter.

**321—29.15(231B) Notice, hearing, appeal and judicial review.**

**29.15(1)** Notice of denial, suspension, or revocation of a certificate shall be effected by delivery to the applicant or certificate holder by certified mail, return receipt requested, or by personal service setting forth the particular reasons for the action. The denial, suspension, or revocation shall become effective 30 days after the receipt or service of the notice. The applicant or certificate holder may, within the 30-day period, give written notice to DIA requesting a hearing. Any DIA action on the notice shall be suspended until the hearing and all appeals are concluded.

**29.15(2)** The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

**29.15(3)** At any time at or prior to the hearing, DIA may rescind the notice of denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

**29.15(4)** All appeals shall be conducted pursuant to 481—Chapter 10.

**29.15(5)** Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

**321—29.16(231B) Records.** DIA collects and stores a variety of records in the course of certifying and monitoring EGHs. Some information stored may be personally identifiable. Each EGH record maintained by DIA contains both open and confidential information. The confidential information shall not be retrievable by personal identifier unless a business uses an individual's name in the title.

**321—29.17(231B) Classes of information.**

**29.17(1)** Open information includes the following:

- a. Certification application and status;
- b. Final findings of state monitoring evaluations;
- c. Records of complaints;
- d. Reports from the state fire marshal;
- e. Plans of correction submitted by an EGH;
- f. Official notices of certification sanctions; and
- g. Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 29.14(231B) and 29.15(231B).

**29.17(2)** Confidential information includes the following:

a. Monitoring or investigating information which does not comprise a final finding, except that information which does not contain a final finding, may be made public in a legal proceeding concerning a citation issued to a program, or denial, suspension or revocation of certification;

b. Names of all complainants;

c. Names of tenants of an EGH, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner.

**321—29.18(231B) Landlord and tenant Act.** Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to EGHs under this chapter.

These rules are intended to implement Iowa Code Supplement chapter 231B.

## ARC 3280B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives notice that a public hearing will be held on June 2, 2004, from 1 to 3 p.m. in Rooms A and B of the Iowa Building located at Kirkwood Community College, 6301 Kirkwood Boulevard SW, Cedar Rapids, Iowa.

The purpose of the public hearing will be to receive oral or written comments regarding proposed changes to Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," and Chapter 22, "Controlling Pollution," Iowa Administrative Code, published in the February 4, 2004, Iowa Administrative Bulletin as **ARC 3155B**. The purpose of that rule making is to establish definitions to be used in the Prevention of Significant Deterioration (PSD) program and to consolidate and modify several definitions currently used in the air quality programs.

To accommodate this additional public hearing, the closing date of the public comment period also is being extended from April 9, 2004, to the close of business on June 11, 2004. The original Notice of Intended Action included announcements for public hearings to be held at other locations in Iowa.

## ARC 3282B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The proposed amendments will:

- Change the current Class B(CW) use designation from a single use designation of Cold Water Aquatic Life to two use designations as follows: Cold Water - Tier 1 (Class B(CW1)), and Cold Water - Tier 2 (Class B(CW2)).

- Incorporate by reference the document entitled "Cold Water Use Designation Assessment Protocol," which proposes an approach to be followed in assessing the cold water uses of water bodies.

- Apply the Sensitive Life Stage Ammonia Chronic criteria year-round to the Class B(CW1) use designation.

- Apply the Sensitive Life Stage Ammonia Chronic criteria seasonally (April 1 through September 30) to the Class B(CW2) use designation to protect the resident nontrout species during their spawning period.

- Establish Dissolved Oxygen criteria for the two proposed use designations, Class B(CW1) and Class B(CW2), at the same level that is associated with the existing Class B(CW) use designation.

- Correct Table 2, Criteria for Dissolved Oxygen, which incorrectly expresses values as milligrams per liter as N, to express values as milligrams per liter.

- Transfer the existing Class B(CW) designated waters to the new Class B(CW1) use designation.

- Change the cold water use designation in the header of Table 1, Criteria for Chemical Constituents, from B(CW) to B(CW1) and establish chemical criteria for Class B(CW2).

- Change the cold water use designation in the header of Table 3a, Acute Criterion for Ammonia in Iowa Streams, from "Class B(CW) Cold Water" to "Class B(CW1) & B(CW2)."

Iowa's current cold water aquatic life use designation, Class B(CW), includes all cold water bodies in a single category of water bodies with temperature, flow, and other habitat characteristics suitable for the maintenance of a wide variety of cold water species, including nonreproducing populations of trout and associated aquatic communities. These proposed amendments will replace the current Class B(CW) use designation with two use designations: Class B(CW1) - Tier 1, and Class B(CW2) - Tier 2. The Class B(CW1) use designation would be defined similarly to the current cold water use designation. The Class B(CW2) use designation would include waters that directly contribute to the base flow of a Class B(CW1) water body, such as small channeled streams that possess natural cold water attributes of temperature and flow. Waters that would likely be designated as Class B(CW2) usually do not support consistent populations of trout (*Salmonidae* family), but may support associated vertebrate and invertebrate organisms.

The existing Class B(CW) waters will be transferred to the new Class B(CW1) use designation. However, some of the water bodies may be reassigned to non-cold water designations when the protocol is used to assess the existing Class B(CW1) water bodies. It is expected that additional waters could be designated as Class B(CW1) or Class B(CW2) waters when adequate documentation is obtained.

The header for Table 1, Criteria for Chemical Constituents, currently displays the Class B(CW) use designation. The header is being changed to incorporate the proposed Class B(CW1) use designation. In addition, chemical criteria for Class B(CW2) are being established for Table 1 that are equivalent to Class B(CW1). However, the human health criteria for these parameters will not be included for Class

B(CW2) streams since no significant fish consumption is expected from Class B(CW2) streams.

The header for Table 3a, Acute Criterion for Ammonia in Iowa Streams, currently displays the Class B(CW) use designation. The header is being changed to incorporate the proposed Class B(CW1) and Class B(CW2) use designations.

As part of the proposed modifications to the water quality standards, an associated revision to the application of the current Ammonia Nitrogen numerical criteria for Class B(CW) waters is proposed. It is proposed that the year-round Sensitive Life Stage Ammonia Chronic criterion be applicable only to Class B(CW1) waters. The Sensitive Life Stage Ammonia Chronic criterion would be applied from April 1 through September 30 to Class B(CW2) waters to protect the resident nontrout species during their spawning period.

With the basic principle of protecting trout populations and associated cold water aquatics, the same Dissolved Oxygen level is proposed as is associated with the existing Class B(CW) use designation. Thus, it is proposed that the current 16-hour and 24-hour minimum levels of 7 mg/l and 5 mg/l Dissolved Oxygen, respectively, be retained for both the proposed Class B(CW1) and Class B(CW2) use designations.

Table 2, Criteria for Dissolved Oxygen, incorrectly expresses values as milligrams per liter as N. The table is being corrected to express values as milligrams per liter.

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at <http://www.state.ia.us/dnr/organiza/epd/wtresrce/wquality/index.htm>.

Any person may submit written suggestions or comments on the proposed amendments through May 28, 2004. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034, fax (515)281-8895 or by E-mail to [adam.schnieders@dnr.state.ia.us](mailto:adam.schnieders@dnr.state.ia.us). Persons who have questions may contact Adam Schnieders at (515)281-7409.

Persons are invited to present oral or written comments at public hearings which will be held:

May 4, 2004, 7 p.m.	Decorah City Hall Meeting Room 400 Claiborne Drive Decorah
May 5, 2004, 7 p.m.	Elkader Opera House 207 N. Main Street Elkader
May 11, 2004, 1 p.m.	Iowa City Public Library Meeting Room A 123 S. Linn St. (use temporary entrance in pedestrian mall) Iowa City
May 14, 2004, 1 p.m.	Wallace State Office Building 5th Floor Conference Rooms 502 East 9th Street Des Moines

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend subrule **61.3(1)**, paragraph "**b**," subparagraph (4), as follows:

(4) Cold water aquatic life — *Tier 1* (Class "B(CW1)"). Waters in which the temperature, and flow, and other habitat characteristics are suitable for the maintenance of a wide variety of cold water species, including reproducing and nonre-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

producing populations of trout (*Salmonidae family*) and associated aquatic communities.

ITEM 2. Amend subrule **61.3(1)**, paragraph “**b**,” by renumbering subparagraphs (5) to (10) as (6) to (11) and adopting **new** subparagraph (5) as follows:

(5) Cold water aquatic life — Tier 2 (Class “B(CW2)”). Waters that directly contribute to the base flow of a Class B(CW1) water body, including small channeled streams and spring runs that possess natural cold water attributes of temperature and flow. Class B(CW2) waters usually do not support consistent populations of trout (*Salmonidae family*), but may support associated vertebrate and invertebrate organisms.

ITEM 3. Amend subrule **61.3(3)**, paragraph “**b**,” introductory paragraph, as follows:

b. Class “B” waters. All waters which are designated as Class B(CW1), B(CW2), B(WW), B(LR), or B(LW) are to be protected for wildlife, fish, aquatic, and semiaquatic life. The following criteria shall apply to all Class “B” waters designated in subrule 61.3(5).

ITEM 4. Amend subrule **61.3(3)**, paragraph “**b**,” subparagraph (6), numbered paragraph “**1**,” as follows:

1. For all Class B(CW1) waters, the early life stage will be year-round.

ITEM 5. Amend subrule **61.3(3)**, paragraph “**b**,” subparagraph (6), by renumbering numbered paragraphs “**2**” to “**4**” as “**3**” to “**5**” and adopting **new** numbered paragraph “**2**” as follows:

2. For all Class B(CW2) waters, the early life stage will begin on April 1 and last through September 30.

ITEM 6. Amend subrule **61.3(3)**, Table 1, Criteria for Chemical Constituents, as follows:

**TABLE 1: Criteria for Chemical Constituents**

(all values in micrograms per liter unless noted otherwise)

Human health criteria for carcinogenic parameters noted below were based on the prevention of an incremental cancer risk of 1 in 100,000. For parameters not having a noted human health criterion, the U.S. Environmental Protection Agency has not developed final national human health guideline values. For noncarcinogenic parameters, the recommended EPA criterion was selected. For Class C waters, the EPA criteria for fish and water consumption were selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above. For Class C waters for which no EPA human health criteria were available, the EPA MCL value was selected.

Parameter		Use Designations					
		B(CW1)	B(CW2)	B(WW)	B(LR)	B(LW)	C
Alachlor	MCL	—	—	—	—	—	2
Aluminum	Chronic	87	87	388	773	748	—
	Acute	1106	1106	4539	9035	983	—
Antimony	Human Health + — F & W	—	—	—	—	—	14
Arsenic (III)	Chronic	200	200	200	1000	200	—
	Acute	360	360	360	1800	360	—
	Human Health — Fish	50	—	50	—	50	—
	Human Health — F & W	—	—	—	—	—	.18
Asbestos	Human Health — F & W	—	—	—	—	—	7(a)
Atrazine	MCL	—	—	—	—	—	3
Barium	Human Health + — F & W	—	—	—	—	—	1000
Benzene	Human Health — F & W	—	—	—	—	—	12
	Human Health — Fish	712.8	—	712.8	—	712.8	—
Benzo(a)Pyrene	Human Health — F & W	—	—	—	—	—	.044
Beryllium	MCL	—	—	—	—	—	4
Bromoform	Human Health — F & W	—	—	—	—	—	43
	Human Health — Fish	3600	—	3600	—	3600	—

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations					
		B(CW1)	B(CW2)	B(WW)	B(LR)	B(LW)	C
Cadmium	Chronic	1	1	15	25	1	—
	Acute	4	4	75	100	4	—
	Human Health + — Fish	168	—	168	—	168	—
	MCL	—	—	—	—	—	5
Carbofuran	MCL	—	—	—	—	—	40
Carbon Tetrachloride	Human Health — F & W	—	—	—	—	—	2.5
	Human Health — Fish	44.2	—	44.2	—	44.2	—
Chlordane	Chronic	.004	.004	.004	.15	.004	—
	Acute	2.5	2.5	2.5	2.5	2.5	—
	Human Health — Fish	.006	—	.006	—	.006	—
	Human Health — F & W	—	—	—	—	—	.021
Chloride	MCL	—	—	—	—	—	250*
Chlorobenzene	Human Health + — Fish	21*	—	21*	—	21*	—
	MCL	—	—	—	—	—	100
Chlorodibromomethane	Human Health — F & W	—	—	—	—	—	4.1
	Human Health — Fish	340	—	340	—	340	—
Chloroform	Human Health — F & W	—	—	—	—	—	57
	Human Health — Fish	4700	—	4700	—	4700	—
Chloropyrifos	Chronic	.041	.041	.041	.041	.041	—
	Acute	.083	.083	.083	.083	.083	—
Chromium (VI)	Chronic	40	40	40	200	10	—
	Acute	60	60	60	300	15	—
	Human Health + — Fish	3365	—	3365	—	3365	—
	MCL	—	—	—	—	—	100
Copper	Chronic	20	20	35	55	10	—
	Acute	30	30	60	90	20	—
	Human Health + — Fish	1000	—	1000	—	1000	—
	Human Health + — F & W	—	—	—	—	—	1300
Cyanide	Chronic	5	5	10	10	10	—
	Acute	20	20	45	45	45	—
	Human Health + — F & W	—	—	—	—	—	700
Dalapon	MCL	—	—	—	—	—	200
Dibromochloropropane	MCL	—	—	—	—	—	.2

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations					
		B(CW1)	B(CW2)	B(WW)	B(LR)	B(LW)	C
4,4-DDT ++	Chronic	.001	.001	.001	.029	.001	—
	Acute	.9	.9	.8	.95	.55	—
	Human Health — Fish	.0059	—	.0059	—	.0059	—
	Human Health — F & W	—	—	—	—	—	.0059
o-Dichlorobenzene	MCL	—	—	—	—	—	600
para-Dichlorobenzene	Human Health + — F & W	—	—	—	—	—	400
	Human Health + — Fish	2.6*	—	2.6*	—	2.6*	—
3,3-Dichlorobenzidine	Human Health — Fish	.2	—	.2	—	.2	—
	Human Health — F & W	—	—	—	—	—	.4
Dichlorobromomethane	Human Health — F & W	—	—	—	—	—	5.6
	Human Health — Fish	460	—	460	—	460	—
1,2-Dichloroethane	Human Health — F & W	—	—	—	—	—	3.8
	Human Health — Fish	986	—	986	—	986	—
1,1-Dichloroethylene	Human Health — F & W	—	—	—	—	—	.57
	Human Health — Fish	32	—	32	—	32	—
cis-1,2-Dichloroethylene	MCL	—	—	—	—	—	70
trans-1,2-Dichloroethylene	Human Health + — F & W	—	—	—	—	—	700
Dichloromethane	MCL	—	—	—	—	—	5
1,2-Dichloropropane	Human Health — F & W	—	—	—	—	—	5.2
Di(2-ethylhexyl)adipate	MCL	—	—	—	—	—	400
Di(2-ethylhexyl)phthalate	Human Health — F & W	—	—	—	—	—	18
Dieldrin	Chronic	.056	.056	.056	.056	.056	—
	Acute	.24	.24	.24	.24	.24	—
	Human Health — Fish	.0014	—	.0014	—	.0014	—
	Human Health — F & W	—	—	—	—	—	.0014
Dinoseb	MCL	—	—	—	—	—	7
2,3,7,8-TCDD (Dioxin)	Human Health — F & W	—	—	—	—	—	1.3 <sup>-7</sup>
	Human Health — Fish	.00014†	—	.00014†	—	.00014†	—
Diquat	MCL	—	—	—	—	—	20
2,4-D	Human Health + — F & W	—	—	—	—	—	100

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations					C
		B(CW1)	B(CW2)	B(WW)	B(LR)	B(LW)	
Endosulfan <sup>(b)</sup>	Chronic	.056	.056	.15	.15	.15	—
	Acute	.11	.11	.3	.3	.3	—
	Human Health + — Fish	240	—	240	—	240	—
	Human Health + — F & W	—	—	—	—	—	110
Endothall	MCL	—	—	—	—	—	100
Endrin	Chronic	.05	.05	.036	.036	.036	—
	Acute	.12	.12	.086	.086	.086	—
	Human Health + — Fish	.81	—	.81	—	.81	—
	Human Health + — F & W	—	—	—	—	—	.76
Ethylbenzene	Human Health + — F & W	—	—	—	—	—	3100
Ethylene dibromide	MCL	—	—	—	—	—	.05
Fluoride	MCL	—	—	—	—	—	4000
Glyphosate	MCL	—	—	—	—	—	700
Heptachlor	Chronic	.0038	.0038	.0038	.01	.0038	—
	Acute	.38	.38	.38	.38	.38	—
	Human Health — Fish	.002	—	.002	—	.002	—
	Human Health — F & W	—	—	—	—	—	.0021
Heptachlor epoxide	Human Health — F & W	—	—	—	—	—	.001
Hexachlorobenzene	Human Health — F & W	—	—	—	—	—	.0075
γ-Hexachlorocyclohexane (Lindane)	Chronic	N/A	N/A	N/A	N/A	N/A	—
	Acute	.95	.95	.95	.95	.95	—
	Human Health — Fish	.63	—	.63	—	.63	—
	Human Health — F & W	—	—	—	—	—	.19
Hexachlorocyclopentadiene	Human Health + — F & W	—	—	—	—	—	240
Lead	Chronic	3	3	30	80	3	—
	Acute	80	80	200	750	80	—
	MCL	—	—	—	—	—	50
Mercury (II)	Chronic	3.5	3.5	2.1	3.7	.91	—
	Acute	6.5	6.5	4.0	6.9	1.7	—
	Human Health + — Fish	.15	—	.15	—	.15	—
	Human Health + — F & W	—	—	—	—	—	.05
Methoxychlor	Human Health + — F & W	—	—	—	—	—	100



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations					
		B(CW1)	B(CW2)	B(WW)	B(LR)	B(LW)	C
Nickel	Chronic	350	350	650	750	150	—
	Acute	3250	3250	5800	7000	1400	—
	Human Health + — Fish	4584	—	4584	—	4584	—
	Human Health + — F & W	—	—	—	—	—	610
Nitrate as N	MCL	—	—	—	—	—	10*
Nitrate + Nitrite as N	MCL	—	—	—	—	—	10*
Nitrite as N	MCL	—	—	—	—	—	1*
Oxamyl (Vydate)	MCL	—	—	—	—	—	200
Parathion	Chronic	.013	.013	.013	.013	.013	—
	Acute	.065	.065	.065	.065	.065	—
Pentachlorophenol (PCP)	Chronic	(d)	(d)	(d)	(d)	(d)	—
	Acute	(d)	(d)	(d)	(d)	(d)	—
	Human Health — Fish	82	—	82	—	82	—
	Human Health — F & W	—	—	—	—	—	.28
Picloram	MCL	—	—	—	—	—	500
Polychlorinated Biphenyls (PCBs)	Chronic	.014	.014	.014	1	.014	—
	Acute	2	2	2	2	2	—
	Human Health — Fish	.0004	—	.0004	—	.0004	—
	Human Health — F & W	—	—	—	—	—	.0017
Polynuclear Aromatic Hydrocarbons (PAHs)**	Chronic	.03	.03	.03	3	.03	—
	Acute	30	30	30	30	30	—
	Human Health — Fish	.3	—	.3	—	.3	—
	Human Health — F & W	—	—	—	—	—	.044
Phenols	Chronic	50	50	50	50	50	—
	Acute	1000	1000	2500	2500	1000	—
	Human Health + — Fish	300	—	300	—	300	—
	Human Health + — F & W	—	—	—	—	—	21*
Selenium (VI)	Chronic	10	10	125	125	70	—
	Acute	15	15	175	175	100	—
	Human Health + — F & W	—	—	—	—	—	170
Silver	Chronic	N/A	N/A	N/A	N/A	N/A	—
	Acute	30	30	100	100	4	—
	MCL	—	—	—	—	—	50
2,4,5-TP (Silvex)	MCL	—	—	—	—	—	10
Simazine	MCL	—	—	—	—	—	4

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Parameter		Use Designations					C
		B(CW1)	B(CW2)	B(WW)	B(LR)	B(LW)	
Styrene	MCL	—	—	—	—	—	100
Tetrachloroethylene	Human Health — F & W	—	—	—	—	—	8
Thallium	Human Health + — F & W	—	—	—	—	—	1.7
Toluene	Chronic	50	50	50	150	50	—
	Acute	2500	2500	2500	7500	2500	—
	Human Health + — Fish	300*	—	300*	—	300*	—
	Human Health + — F & W	—	—	—	—	—	6800
Total Residual Chlorine (TRC)	Chronic	10	10	20	25	10	—
	Acute	35	35	35	40	20	—
Toxaphene	Chronic	.037	.037	.037	.037	.037	—
	Acute	.73	.73	.73	.73	.73	—
	Human Health — Fish	.0075	—	.0075	—	.0075	—
	Human Health — F & W	—	—	—	—	—	.0073
1,2,4-Trichlorobenzene	MCL	—	—	—	—	—	70
1,1,1-Trichloroethane	MCL	—	—	—	—	—	200
	Human Health + — Fish	173*	—	173*	—	173*	—
1,1,2-Trichloroethane	Human Health — F & W	—	—	—	—	—	6
Trichloroethylene (TCE)	Chronic	80	80	80	80	80	—
	Acute	4000	4000	4000	4000	4000	—
	Human Health — Fish	807	—	807	—	807	—
	Human Health — F & W	—	—	—	—	—	27
Trihalomethanes (total) <sup>(c)</sup>	MCL	—	—	—	—	—	80
Vinyl Chloride	Human Health — F & W	—	—	—	—	—	20
	Human Health — Fish	5250	—	5250	—	5250	—
Xylenes (total)	MCL	—	—	—	—	—	10*
Zinc	Chronic	200	200	450	2000	100	—
	Acute	220	220	500	2200	110	—
	Human Health + — Fish	5000	—	5000	—	5000	—
	Human Health + — F & W	—	—	—	—	—	9100

\* units expressed as milligrams/liter

\*\* to include the sum of known and suspected carcinogenic PAHs

† expressed as nanograms/liter

+ represents the noncarcinogenic human health parameters

++ The concentrations of 4,4-DDT or its metabolites; 4,4-DDE and 4,4-DDD, individually, shall not exceed the human health criteria.

(a) units expressed as million fibers/liter (longer than 10 micrometers)

(b) includes alpha-endosulfan, beta-endosulfan, and endosulfan sulfate in combination or as individually measured

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

- (c) The sum of the four trihalomethanes (bromoform [tribromomethane], chlorodibromomethane, chloroform [trichloromethane], and dichlorobromomethane) may not exceed the MCL.
- (d) Class B numerical criteria are for pentachlorophenol a function of pH using the equation: Criterion ( $\mu\text{g/l}$ ) =  $e^{[1.005(\text{pH}) - x]}$ , where  $e = 2.71828$  and  $x$  varies according to the following table:

	B(CW1)	B(CW2)	B(WW)	B(LR)	B(LW)
Acute	3.869	3.869	4.869	4.869	4.869
Chronic	4.134	4.134	5.134	5.134	5.134

ITEM 7. Amend subrule **61.3(3)**, Table 2, Criteria for Dissolved Oxygen, as follows:

**TABLE 2. Criteria for Dissolved Oxygen**

(all values expressed in milligrams per liter as N)

	B(CW1)	B(CW2)	B(WW)	B(LR)	B(LW)
Minimum value for at least 16 hours of every 24-hour period	7.0	7.0	5.0	5.0	5.0*
Minimum value at any time during every 24-hour period	5.0	5.0	5.0	4.0	5.0*

\*applies only to the upper layer of stratification in lakes

ITEM 8. Amend subrule **61.3(3)**, Table 3a, Acute Criterion for Ammonia in Iowa Streams, header, as follows:

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW), B(LR) & B(LW)	Class B(CW1) & B(CW2) Cold Water

ITEM 9. Amend subrule **61.3(5)** by striking the date "July 16, 2003" and inserting in lieu thereof the effective date of this amendment.

ITEM 10. Adopt new subrule 61.3(6) as follows:

**61.3(6)** Cold water use designation assessment protocol. The department hereby incorporates by reference "Cold Water Use Designation Assessment Protocol," effective [insert effective date]. This document may be obtained from the Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034, or on the department's Web site at <http://www.state.ia.us/dnr/organiza/epd/wtresrce/wquality/index.htm>.

## ARC 3279B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Notice of Termination

Pursuant to the authority of Iowa Code section 455B.200, the Environmental Protection Commission terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on November 12, 2003, as **ARC 2924B**, proposing to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The proposed amendments to Manure Applicator Certification were required in 2003 Iowa Acts, chapter 163 [House File 644].

The proposed amendments were also Filed Without Notice and published as **ARC 2923B**. The Notice was published to solicit comments and to provide opportunity for hearing. Comments were received during the comment period and at the public hearing, but no changes are required to the Filed Without Notice amendments. Therefore, there is no need to proceed with rule making for **ARC 2924B**.

## ARC 3283B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455H.105, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 137, "Iowa Land Recycling Program and Response Action Standards," Iowa Administrative Code.

In part, these amendments reflect changes to Iowa Code chapter 455H that were made in 2002 Iowa Acts, chapter 1091 [Iowa Code sections 455H.203, 455H.204, and 455H.208], including changes in how risk-based standards are computed and in requirements for public notification. These amendments include other items to satisfy the concerns of the U.S. Environmental Protection Agency (EPA) in the state's negotiations with EPA for a memorandum of agreement for the Iowa Land Recycling Program. Amendments are proposed to simplify compliance with site-specific soil standards. In addition, various minor corrections and clarifications are proposed.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 5, 2004. Such written materials should be directed to Robert Drustup, Iowa Geological Survey and Land Quality Bureau, Iowa Department of Natural Resources, 502 East Ninth Street, Des Moines, Iowa 50319; fax (515)281-8895. Persons wishing to convey their views orally should contact Robert Drustup at (515)281-8900 or at the Wallace State Office Building, Fifth Floor.

When submitting comments, the Iowa Geological Survey and Land Quality Bureau encourages stakeholders to utilize the following guidelines. These guidelines aid the Bureau in accurately understanding and creating a record of input.

1. Include your mailing address and contact information.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

2. Please state if you are submitting comments as an individual, or for a business or organization.

3. Cite the specific rule(s) on which you are commenting.

4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative language that you think would improve the specific rule(s) and explain why.

Also, there will be a public hearing on May 5, 2004, at 1:30 p.m. in Conference Room 5W, Wallace State Office Building, 502 East Ninth Street, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who will attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 455H.

The following amendments are proposed.

ITEM 1. Amend rule **567—137.2(455H)** as follows:

Rescind the definitions for “Group A and B chemicals,” “Group C, D and E chemicals” and “restricted access.”

Adopt the following **new** definitions in alphabetical order:

“Cumulative risk” means a summation of cancer and non-cancer risks, determined separately, based on exposure to multiple contaminants from the same medium and exposure of the same individual to contaminants in multiple media.

“Group A, B, C, D and E chemicals” means hazardous substances which have been classified based on the weight of evidence of human carcinogenicity. Group A substances are carcinogenic to humans. Group B substances are likely to be carcinogenic to humans. Group C substances have suggestive evidence of human carcinogenicity, but not sufficient evidence to assess human carcinogenic potential. Data are inadequate to assess human carcinogenic potential for Group D substances. Group E substances are not likely to be carcinogenic to humans.

“Nonresidential land-use area” means any area that is not a residential land-use area.

“Reference dose,” expressed in units of milligrams per day exposure to the contaminant per kilogram of body weight of the exposed individual, means the amount of contaminant that an individual can ingest on a daily basis for a lifetime that is not likely to result in adverse noncancer health effects. A reference dose is protective of the entire human population, including sensitive subpopulations.

“Slope factor” means an upper bound estimate that approximates a 95 percent confidence limit of the increased cancer risk from a lifetime exposure to a contaminant. This estimate is expressed in units of the proportion of a population that is affected per milligram per day exposure to the contaminant per kilogram of body weight of the exposed individual.

“Target organ” means an organ of the human body (e.g., liver) that has been determined to be most susceptible to a noncancer health effect from exposure to the contaminant of concern. A “reference dose” used to calculate noncancer health risk is normally established based on adverse impact to a target organ or organs from exposure to the contaminant of concern.

ITEM 2. Amend subrule **137.3(2)**, paragraph “c,” subparagraph (1), as follows:

(1) Soil and groundwater samples of hazardous substances which have been analyzed by a laboratory certified under 567—Chapter 83 for the analytes being tested. ~~If there is not a laboratory certified under 567—Chapter 83 for the analytes being tested, then samples may be tested in accordance with 567—paragraph 133.3(1)“d.”~~ The laboratory analysis should establish the presence of hazardous substances under conditions which exceed or are likely to exceed a statewide standard, if a statewide standard is available. Copies of the laboratory analytical report, boring logs and a site diagram showing the location of the sampling points in relation to the site should be included.

ITEM 3. Amend rule 567—137.5(455H) as follows:

**567—137.5(455H) Statewide standards.**

**137.5(1) Purpose.** This rule defines the basis and procedure for establishing statewide standards for contaminants in groundwater, soil, and surface water. Statewide standards for groundwater and soil represent concentrations of contaminants in these media at which normal exposure via ingestion and dermal contact with soil is considered unlikely to pose a threat to human health. Statewide standards for surface water are based on protection of aquatic life, ~~except when the surface water is a source of drinking water in which case they are based on~~ and protection of human health. This rule also describes how air standards are to be addressed.

**137.5(2) Scope.** Statewide standards described herein address what are considered to be the most likely, normal exposure situations. Statewide standards for groundwater address direct exposure via ingestion to individual contaminants in the media of concern only. *Statewide standards for soil address direct exposure to individual contaminants via ingestion and dermal contact.* In the event other exposure concerns are identified, such that to multiple contaminants may occur or exposure from more than one medium may occur, statewide standards alone are may not be protective of human health and the environment; therefore, cumulative risk standards must be met in accordance with subrule 137.10(7). In addition, the department may deny the use of the statewide standards prescribed herein and require the use of site-specific standards based on site-specific conditions pursuant to subrule 137.6(9).

Examples of exposure concerns not anticipated by the statewide standard standards might include, but are not limited to:

- Significant plant uptake of contaminants from soil or groundwater; ;
- Contaminants entering drinking water lines from contact with soil or groundwater; ;
- ~~Situations in which dermal exposure to contaminants in soil poses a substantially greater risk than ingestion of the soil;~~
- ~~Situations where the contaminated media represents a contaminant source for other exposure concerns or pathways;~~
- Ecological concerns, other than for surface water; ;
- Groundwater in a nonprotected groundwater source that is used or likely to be used for drinking water or other use.

**137.5(3) Establishment of risk-based contaminant concentrations.**

a. Risk-based concentration formula. Risk-based contaminant concentrations for soil and groundwater, except lead, shall be computed using the following formula, where appropriate:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(Formula I)

$$C = \frac{RF \times AT \times 365 \text{ days/year}}{\text{Abs} \times [(ER_c \times EF_c \times ED_c) \div BW_c + (ER_a \times EF_a \times ED_a) \div BW_a] \times CF}$$

NOTE: When a risk-based concentration is computed for two routes of exposure to the same medium (e.g., soil oral exposure and soil dermal exposure), the composite risk-based concentration equals the multiple of the risk-based concentration for each route of exposure divided by the sum of the risk-based concentration for each route of exposure.

Where: C = Concentration of contaminant (soil: mg/kg, water: mg/l)

RF = Risk factor

For protection from cancer health risks:

RF = TR ÷ SF

Where: TR = Target cancer risk (unitless)

SF = Oral-slope Slope factor per [(mg/kg)/day]<sup>-1</sup> for a route of exposure; see paragraph "c" for source.

For protection from noncancer health risks:

RF = THQ × RfD

Where: THQ = Target hazard quotient (unitless)

RfD = Oral-reference Reference dose (mg/kg)/day for a route of exposure; see paragraph "c" for source.

AT = Averaging time (years); time over which exposure is averaged and potential adverse effects may occur

Abs = Absorption factor (unitless); portion of exposed contaminant absorbed by the body

ER<sub>c</sub> = Exposure rate by a child (soil: mg/day, water: l/day)

EF<sub>c</sub> = Exposure frequency by a child (days/year)

ED<sub>c</sub> = Exposure duration by a child (years)

BW<sub>c</sub> = Body weight of exposed child (kg)

ER<sub>a</sub> = Exposure rate by an adult (soil: mg/day, water: l/day)

EF<sub>a</sub> = Exposure frequency by an adult (days/year)

ED<sub>a</sub> = Exposure duration by an adult (years)

BW<sub>a</sub> = Body weight of exposed adult (kg)

CF = Conversion factor: 10<sup>-6</sup> kg/mg for soils; 1 (unitless) for water

b. Carcinogenic classification of chemicals. The potential carcinogenicity of chemicals will be based on the weight-of-evidence classification system utilized by the U.S. Environmental Protection Agency (EPA). Risk-based concentrations will be based on cancer health effects for individual chemicals that are classified as Group A or Group B. Risk-based concentrations The risk-based concentration for an individual chemical will be based on noncancer health effects for chemicals that are classified as Group C, Group D or Group E. In the absence of such classification for a chemical, the Group D classification will be assumed. Noncancer risks for a Group A or Group B chemical will be included in the determination of cumulative noncancer risk in accordance with subrule 137.10(7), if a reference dose exists for that chemical. Cancer risk associated with a Group C chemical shall be included in the determination of cumulative cancer risk in accordance with subrule 137.10(7), if a cancer slope factor exists for that chemical.

c. Source of toxicity values. Source of information on toxicity factors (e.g., oral reference doses and oral slope factors) and carcinogenic classification for chemicals shall be in accordance with the following hierarchy. The most recent version of each shall be used. EPA's Integrated Risk Information System (IRIS) shall be the primary source of information on toxicity factors (e.g., oral reference doses and oral slope factors), carcinogenic classification for chemicals, and the target organs. Such information that is not available on IRIS shall be obtained from other sources consistent with current EPA guidelines. The Iowa department of public health shall be consulted regarding toxicity values not available on IRIS. Absorption factors for dermal soil exposure shall be based on best available information, which will usually be obtained from EPA guidance documents.

(1) EPA's Integrated Risk Information System (IRIS).

(2) EPA's Health Effects Assessment Summary Tables (HEAST).

(3) Best available information, including consultation with toxicologists at EPA's National Center for Exposure Assessment in Cincinnati, Ohio.

137.5(4) Statewide standards for groundwater.

a. Protected groundwater source. Statewide standards for groundwater in a protected groundwater source will be the enforceable Maximum Contaminant Level (MCL) established by the EPA pursuant to the Safe Drinking Water Act, if one an MCL exists. If no enforceable MCL exists, the statewide standard for chemicals will be the lifetime health advisory level (HAL) as provided in the latest "Drinking Water Regulations and Health Advisories" by the EPA's Office of Water or equivalent. If no MCL or HAL exists, the statewide standard for a chemical will be calculated using Formula I and input variables for groundwater ingestion in accordance with the following subparagraphs Table I.

(1) Input variables for calculating statewide standards for chemicals in groundwater from a protected groundwater source based on cancer risk are as follows:

TR = 5 × 10<sup>-6</sup>

SF = Chemical-specific (see paragraph 137.5(3)"c")

AT = 70 years

Abs = 1

ER<sub>c</sub> = 1 l/day

EF<sub>c</sub> = 0 days/year

ED<sub>c</sub> = 6 years

BW<sub>c</sub> = 15 kg

ER<sub>a</sub> = 2 l/day

EF<sub>a</sub> = 365 days/year

ED<sub>a</sub> = 70 years

BW<sub>a</sub> = 70 kg

CF = 1

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(2) Input variables for calculating statewide standards for chemicals in groundwater from a protected groundwater source based on noncancer risk are as follows:

$THQ_C = 0.02$  (Group C chemicals);  $THQ_{D,E} = 0.2$  (Group D and E chemicals)

$RfD$  = Chemical-specific (see paragraph 137.5(3)“c”)

$AT = 70$  years

$Abs = 1$

$ER_C = 1$  l/day

$EF_C = 0$  days/year

$ED_C = 6$  years

$BW_C = 15$  kg

$ER_a = 2$  l/day

$EF_a = 365$  days/year

$ED_a = 70$  years

$BW_a = 70$  kg

$CF = 1$

b. Groundwater in a nonprotected groundwater source. The statewide standard for a Group A or B chemical, except arsenic, in groundwater in a nonprotected groundwater

source will be 20 five times the statewide standard for the chemical in a protected groundwater source or a risk-based concentration using Formula I with  $TR = 10^4$  and the exposure factors input variables specified in subparagraph 137.5(4)“a”(1) Table I, whichever is larger. The statewide standard in a nonprotected groundwater source for arsenic will be 0.1 mg/l. The statewide standard for a Group C chemical in a nonprotected groundwater source will be 50 times the statewide standard for the chemical in a protected groundwater source. The statewide standard for a Group D or E chemical in a nonprotected groundwater source will be 5 times the statewide standard for the chemical in a protected groundwater source. However, in no case will the statewide standard for a Group C, D, or E chemical in a nonprotected groundwater source be less than a risk-based concentration using Formula I with a  $THQ = 1$  and exposure factors as specified in paragraph 137.5(4)“a”(2). The statewide standards for groundwater in a nonprotected groundwater source are based on groundwater ingestion only.

Table I  
Input Variables for Risk-Based Statewide Standards for Groundwater  
from Protected and Nonprotected Groundwater Sources

<i>Parameter</i>	<i>Units</i>	<i>Cancer Group</i>	<i>Protected</i>	<i>Nonprotected</i>
<i>TR</i>	<i>unitless</i>	<i>A, B</i>	$5 \times 10^{-6}$	$1 \times 10^{-4}$
<i>SF</i>	$[(\text{mg/kg})/\text{day}]^{-1}$	<i>A, B, C</i>	<i>Chem.-spec.</i>	<i>Chem.-spec.</i>
<i>THQ</i>	<i>unitless</i>	<i>C</i>	<i>0.02</i>	<i>0.1</i>
		<i>D, E</i>	<i>0.2</i>	<i>1</i>
<i>RfD</i>	$(\text{mg/kg})/\text{day}$	<i>C, D, E</i>	<i>Chem.-spec.</i>	<i>Chem.-spec.</i>
<i>AT</i>	<i>years</i>	<i>A - E</i>	<i>70</i>	<i>70</i>
<i>Abs</i>	<i>unitless</i>	<i>A - E</i>	<i>1</i>	<i>1</i>
<i>ER<sub>C</sub></i>	<i>l/day</i>	<i>A - E</i>	<i>1</i>	<i>1</i>
<i>EF<sub>C</sub></i>	<i>days/yr</i>	<i>A - E</i>	<i>0</i>	<i>0</i>
<i>ED<sub>C</sub></i>	<i>years</i>	<i>A - E</i>	<i>6</i>	<i>6</i>
<i>BW<sub>C</sub></i>	<i>kg</i>	<i>A - E</i>	<i>15</i>	<i>15</i>
<i>ER<sub>a</sub></i>	<i>l/day</i>	<i>A - E</i>	<i>2</i>	<i>2</i>
<i>EF<sub>a</sub></i>	<i>days/yr</i>	<i>A - E</i>	<i>365</i>	<i>365</i>
<i>ED<sub>a</sub></i>	<i>years</i>	<i>A - E</i>	<i>70</i>	<i>70</i>
<i>BW<sub>a</sub></i>	<i>kg</i>	<i>A - E</i>	<i>70</i>	<i>70</i>
<i>CF</i>	<i>unitless</i>	<i>A - E</i>	<i>1</i>	<i>1</i>

**137.5(5)** Statewide standards for soil. Statewide standards for chemicals in soil, except lead, will be calculated using Formula I based on incidental ingestion of soil and dust and dermal contact with soil with input variables in accordance with the following paragraphs Table II. The statewide standard for lead in soil shall be 400 mg/kg.

a. Input variables for calculating statewide standards for chemicals in soil based on cancer risk are as follows:

$TR = 5 \times 10^{-6}$

$SF$  = Chemical-specific (see paragraph 137.5(3)“c”)

$AT = 70$  years

$Abs = 1$

$ER_C = 200$  mg/day

$EF_C = 350$  days/year

$ED_C = 6$  years

$BW_C = 15$  kg

$ER_a = 100$  mg/day

$EF_a = 350$  days/year

$ED_a = 64$  years

$BW_a = 70$  kg

$CF = 10^{-6}$  kg/mg

b. Input variables for calculating statewide standards for chemicals in soil based on noncancer risks are as follows:

$THQ = 1$

$RfD$  = Chemical-specific (see paragraph 137.5(3)“c”)

$AT = 6$  years

$Abs = 1$

$ER_C = 200$  mg/day

$EF_C = 350$  days/year

$ED_C = 6$  years

$BW_C = 15$  kg

$ER_a = 100$  mg/day

$EF_a = 350$  days/year

$ED_a = 0$  years

$BW_a = 70$  kg

$CF = 10^{-6}$  kg/mg

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Table II  
Input Variables for Statewide Soil Standards

<u>Parameter</u>	<u>Units</u>	<u>Cancer Group</u>	<u>Route of Exposure</u>	
			<u>Oral</u>	<u>Dermal</u>
TR	unitless	A, B	$5 \times 10^{-6}$	$5 \times 10^{-6}$
SF	$[(\text{mg/kg})/\text{day}]^{-1}$	A, B	Chem.-spec.	Chem.-spec.
THQ	unitless	C	0.1	0.1
		D, E	1	1
RfD	(mg/kg)/day	C, D, E	Chem.-spec.	Chem.-spec.
AT	years	A, B	70	70
		C, D, E	6	6
Abs	unitless	A - E	1	Chem.-spec.
ER <sub>c</sub>	mg/day	A - E	200	560*
EF <sub>c</sub>	days/yr	A - E	350	350
ED <sub>c</sub>	years	A - E	6	6
BW <sub>c</sub>	kg	A - E	15	15
ER <sub>a</sub>	mg/day	A - E	100	400*
EF <sub>a</sub>	days/yr	A - E	350	350
ED <sub>a</sub>	years	A, B	24	24
		C, D, E	0	0
BW <sub>a</sub>	kg	A - E	70	70
CF	kg/mg	A - E	$10^{-6}$	$10^{-6}$

\*Dermal exposure rate is based on 2,800 cm<sup>2</sup> of exposed skin on a child with 0.2 mg/cm<sup>2</sup> of soil adhering to the child's skin and 5,700 cm<sup>2</sup> of exposed skin on an adult with 0.07 mg/cm<sup>2</sup> of soil adhering to the adult's skin per each dermal exposure event. A dermal exposure event is assumed to be one event per day of exposure.

**137.5(6) through 137.5(9)** No change.

**137.5(10)** Maintenance of statewide standards. The toxicity values, *absorption factors for dermal exposure to soils*, and promulgated standards that are a basis for statewide standards are subject to periodic revision due to actions not governed under this rule. The department *in conjunction with the Iowa department of public health* will maintain a guidance document that contains a current list of *toxicity values, absorption factors for dermal exposure to soils, target organs for cumulative noncarcinogenic health risks, promulgated standards, and the resultant statewide standards* that will be readily available to the public. *This guidance document will reference all the sources of the information. In the absence of a dermal slope factor or a dermal reference dose for a chemical, the oral slope factor or oral reference dose will be used with adjustments made to account for differences in oral and dermal absorption rates in accordance with current EPA guidance.* Statewide standards for individual sites will be locked-in at the beginning of the site assessment process (rule 137.8(455H)). If a statewide standard does not exist for a chemical, it will be the department's responsibility to establish a statewide standard, pursuant to subrules 137.5(4) and 137.5(5), for groundwater and soil, and to add ~~it~~ *the newly established statewide standard* to the comprehensive list of statewide standards in the guidance document maintained by the department.

ITEM 4. Amend subrule 137.6(6) as follows:

**137.6(6)** Site-specific soil standards based on land use and soil depth. Site-specific soil standards based on land use and soil depth ~~may be used in conjunction with institutional controls may be used.~~ Predetermined site-specific soil exposures based on ~~residential, nonresidential, and restricted access~~ land use and soil depth are provided in the following paragraphs. Lists of resulting site-specific soil standards for

*individual contaminants* for these land-use and soil-depth categories will be maintained by the department in a guidance document and made readily available to the public. Use of these site-specific soil standards must be supported by *appropriate institutional controls that ensure that land use will not change to a land use that has a larger potential exposure to soil than land use which forms the basis for the standard being used.* Site-specific soil standards based on land use and soil depth, as described herein, address ~~only ingestion of and dermal contact with soil.~~ Compliance with these standards will not guarantee that contaminants in soils may not cause unacceptable exposure via other pathways (e.g., ecological exposure, ~~dermal contact with soil, soil to groundwater, soil to confined air space, subsurface movement of vapors from soil to indoor air~~). In addition, the risk factors that form the bases for site-specific soil standards for individual contaminants, with the exception of Group C chemicals, are the same as acceptable cumulative risk factors allowed for exposure to multiple contaminants in the same medium and multiple media. Therefore, compliance with site-specific soil standards for individual contaminants may not result in compliance with cumulative risk requirements pursuant to rule 137.10(455H).

a. Deep soil in a residential land-use area. Site-specific soil standards for deep soils equaling ten times the statewide standard for soils, except for lead, may be used. *The site-specific standard for lead in deep soil in a residential land-use area shall be calculated using the most current version of EPA's Exposure Model for Assessing Risk Associated with Adult Exposures to Lead in Soil.* ~~The lead standard for deep, residential soils is 800 mg/kg.~~ Soils at a depth of ten feet and greater will normally be classified as deep soils. The department may deny the use of a deep soil standard associated with a residential land use or require a modification to the standard

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due to site-specific considerations including topography, development potential, and actual development plans. In lieu of this default site-specific lead standard for deep soil, a site-specific standard for lead in deep soil may be calculated using the most current version of EPA's Exposure Model for Assessing Risk Associated with Adult Exposures to Lead in Soil. The use of a site-specific standard for deep soil in a residential land-use area shall be supported by an institutional control that permanently records the existence of contaminants above statewide standards in deep soils and restricts excavation resulting in deep soils being placed on the surface.

b. Nonresidential land use. The nonresidential land-use designation will be applicable to areas that are not classified as residential. Site-specific soil standards, except for lead, for nonresidential areas may be based on Formula I using the risk and exposure factors shown in Table I III. Site-specific A value of 1,100 mg/kg may be used as a site-specific soil standard for lead in soils less than 2 feet deep

in a nonresidential land-use area are 400, 800, and 1,600 mg/kg for soils less than 2, 2-10, and greater than 10 feet deep, respectively. In lieu of these *this* default site-specific lead standards standard, a site-specific standards standard for lead in soil less than 2 feet deep may be calculated using the most current version of EPA's Integrated Exposure Uptake Biokinetic Model for Lead in Children. Lead in soil 2-10 feet deep may be calculated using the most current version of EPA's Exposure Model for Assessing Risk Associated with Adult Exposures to Lead in Soil with a multiple factor of 2 applied to this result for lead standards in soil greater than 10 feet deep. The site-specific standard for lead in soils greater than 2 feet deep in a nonresidential land-use area shall be calculated using the most current version of EPA's Exposure Model for Assessing Risk Associated with Adult Exposures to Lead in Soil. The use of a nonresidential land-use classification must be supported by an environmental protection easement that prevents a change in land use to residential.

Table I III  
Input Variables for Site-Specific Soil Standards for  
Individual Contaminants for Nonresidential Area Land-Use Designation

Parameter	Units	Cancer Group	Soil Depth (ft.)		
			≤2	>2-10	≥10
TR	unitless	A, B	$5.1 \times 10^{-6}$	$5.1 \times 10^{-6}$	$5 \times 10^{-6}$
SF (oral)	[(mg/kg)/day] <sup>-1</sup>	A, B	Chem.-spec.	Chem.-spec.	Chem.-spec.
SF (dermal)	[(mg/kg)/day] <sup>-1</sup>	A, B	Chem.-spec.	Chem.-spec.	
THQ	unitless	C, D, E	1	1	1
RfD (oral)	(mg/kg)/day	C, D, E	Chem.-spec.	Chem.-spec.	Chem.-spec.
RfD (dermal)	(mg/kg)/day	C, D, E	Chem.-spec.	Chem.-spec.	
AT	years	A, B	70	70	70
		C, D, E	60	30	30
Abs (oral)	unitless	A - E	1	1	1
Abs (dermal)	unitless	A - E	Chem.-spec.	Chem.-spec.	
ER <sub>c</sub>	mg/day	A - E	200	0	0
EF <sub>c</sub>	days/yr	A - E	350	0	0
ED <sub>c</sub>	years	A - E	60	0	0
BW <sub>c</sub>	kg	A - E	15	15	15
ER <sub>a</sub> (oral)	mg/day	A - E A, B	100	50	500
		C, D, E	330	330	
ER <sub>a</sub> (dermal)	mg/day	A, B	660*	990*	
		C, D, E	660*	990*	
EF <sub>a</sub>	days/yr	A - E A, B	350	250	200
		C, D, E	200	200	
ED <sub>a</sub>	years	A, B	24	30	1
		C, D, E	0	30	1
BW <sub>a</sub>	kg	A - E	70	70	70
CF	kg/mg	A - E	10 <sup>-6</sup>	10 <sup>-6</sup>	10 <sup>-6</sup>

NOTE: Oral and dermal factors are the same unless otherwise noted.

\*Dermal exposure rate is based on 3,300 cm<sup>2</sup> of exposed skin on an adult with 0.2 mg/cm<sup>2</sup> of shallow soil adhering to the skin and 0.3 mg/cm<sup>2</sup> of deep soil adhering to the skin per each dermal exposure event. A dermal exposure event is assumed to be one event per day of exposure.

c.—Restricted access land use. The restricted access land-use designation will be applicable to nonresidential areas where access is physically limited (e.g., fenced-in, covered with buildings or pavement, remote location). Site-specific soil standards, except for lead, for restricted access locations are based on Formula I using risk and exposure factors shown

in Table II. Site-specific soil standards for lead at restricted access locations are 800, 1,600 and 3,200 mg/kg for soils less than 2, 2-10, and greater than 10 feet deep, respectively. In lieu of these default site-specific lead standards, site-specific standards for lead in soil less than 2 feet deep may be calculated using the most current version of EPA's Exposure Mod-



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el for Assessing Risk Associated with Adult Exposures to Lead in Soil with multiple factors of 2 and 4 applied to this result for lead standards in soil 2-10 and greater than 10 feet deep, respectively. The use of a restricted access land use

classification must be supported by an environmental easement that prevents a change in land use to residential and ensures that the access restrictions will be maintained.

Table II

Input Variables for Site-Specific Soil Standards for Restricted Access Land-Use Designation

Parameter	Units	Cancer Group	Soil Depth (ft.)		
			≤2	2-10	≥10
TR	unitless	A, B	$5 \times 10^{-6}$	$5 \times 10^{-6}$	$5 \times 10^{-6}$
SF	$[(\text{mg/kg})/\text{day}]^{-1}$	A, B	Chem.-spec.	Chem.-spec.	Chem.-spec.
THQ	unitless	C, D, E	1	1	1
RfD	$(\text{mg/kg})/\text{day}$	C, D, E	Chem.-spec.	Chem.-spec.	Chem.-spec.
AT	years	A, B	70	70	70
		C, D, E	30	30	30
Abs	unitless	A-E	1	1	1
ER <sub>c</sub>	mg/day	A-E	0	0	0
EF <sub>c</sub>	days/yr	A-E	0	0	0
ED <sub>c</sub>	years	A-E	0	0	0
BW <sub>c</sub>	kg	A-E	15	15	15
ER <sub>a</sub>	mg/day	A-E	50	500	500
EF <sub>a</sub>	days/yr	A-E	250	200	20
ED <sub>a</sub>	years	A-E	30	1	1
BW <sub>a</sub>	kg	A-E	70	70	70
CF	kg/mg	A-E	$10^{-6}$	$10^{-6}$	$10^{-6}$

ITEM 5. Amend subrule **137.6(8)**, paragraph “c,” as follows:

c. Health risk. Where applicable, the The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) 8-hour time-weighted-average limits for air contaminants pursuant to 29 CFR 1910.1000, *Subpart Z*, may be utilized for site-specific standards with an appropriate site-specific adjustment to account for uncertainties in workplace settings where the OSHA standards are applicable and the contaminant of concern is used. As a default, the adjustment shall consist of dividing the OSHA standard by a factor of 10. For locations where OSHA standards are not applicable, site-specific standards for air in a confined space shall be risk-based using the chemical-specific toxicity values of inhalation unit risk (UR) and inhalation reference concentration (RfC) determined in accordance with paragraph 137.5(3)“c” for Group A and B and Group C, D and E chemicals, respectively. Formulas II and III shall be used to calculate risk-based, site-specific air standards for Group A and B and Group C, D and E chemicals based on carcinogenic and noncarcinogenic effects, respectively, where C is the risk-based contaminant concentration in air. If a value for both RfC and UR exists for a compound, the risk-based site-specific standard will be the smaller of C resulting from Formulas II and III.

(Formula II)

$$C = AF \times TR \div UR$$

(Formula III)

$$C = AF \times RfC$$

The UR and RfC toxicity values are based on a continuous exposure of 20 cubic meters per day by a 70 kg adult. The adjustment factor (AF) in Formulas II and III may be used to adjust for site-specific exposure conditions. A target cancer risk (TR) of  $10^{-4}$  shall be used in a residential setting unless another value is approved by the department. If toxicity val-

ues are not available for a chemical, a value equal to 0.7 percent of the OSHA standard may be used as the site-specific standard for air in a confined space in a residential setting.

ITEM 6. Amend subrule 137.8(3) as follows:

Amend the introductory paragraph as follows:

**137.8(3)** Site assessment details. In order to meet the stated purpose of the site assessment, it will be necessary to characterize numerous attributes related to the enrolled site and its setting. The following objectives are intended to provide a framework in which to accomplish this purpose. It is recognized that these objectives may exceed the appropriate scope of some site assessments and that there may be situations in which it may be necessary to define additional objectives. Any such deviation would preferably be addressed in a site assessment plan. *The department may also develop guidance documents that recommend more specific procedures for accomplishing site assessment objectives. Such guidance documents will be readily available to the public.* In general, an acceptable site assessment should address the following items.

Adopt the following **new** paragraph “f”:

1. Evaluate the potential for contaminants to migrate from one medium to another. The following subparagraphs prescribe requirements for assessing potential migration of contamination from one medium to another. Requirements in the following subparagraphs may be waived if it can be demonstrated in accordance with procedures established in 567—Chapter 135 or the latest version of ASTM Standards related to the Phase II environmental site assessment process that migration of contamination from one medium to another will not cause a violation of the applicable standard in the receiving medium. The assessment activities prescribed in the following subparagraphs are intended to determine if significant migration of contamination from one medium to another has occurred. If evidence of significant migration of contamination from one medium to another (i.e., generally a con-

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taminant concentration in the receiving medium in excess of 10 percent of the statewide standard) is discovered, full-scale characterization of the receiving medium may be required.

(1) The water from any pond or lake on the site or within 300 feet of the site shall be sampled and analyzed for the contaminants of concern. Any surface stream that runs through the site or within 300 feet of the site should be sampled at a location downstream of any potential impact from the site and analyzed for the contaminants of concern. Depending on the characteristics of the contaminants (e.g., solubility), associated sampling and analysis of sediments may be required.

(2) Groundwater at the location most likely to be impacted by each known substantial area of soil contamination shall be sampled and analyzed for the contaminants of concern. If the area of soil contamination exceeds 10,000 square feet, additional groundwater samples may be required.

(3) Soil vapors in each area that is most likely to be impacted by known groundwater or soil contamination shall be sampled and analyzed for the volatile organic contaminants of concern. If the area of soil or groundwater contamination exceeds 10,000 square feet, additional soil vapor samples may be required. If vapors may be impacting an existing enclosed space, a soil vapor sample shall be collected from a location that is most likely to have vapor contamination adjacent to the enclosed space.

If the potential for the existence of problematic concentrations of the vapors in the enclosed space cannot be dismissed based on soil vapor sampling, sampling and analysis of vapors inside the enclosed space may be conducted to determine whether or not a problem exists. Appropriate measures for distinguishing between contaminant vapors originating from within the enclosed space versus those from the external sources that are under investigation may be made with the approval of the department.

Ambient air sampling may be required if a very large area or extremely high concentrations of highly volatile contaminants exist in shallow soil or evidence of vapor contamination exists, such as odors or a high vapor reading on a vapor-screening instrument.

(4) If a water line exists within the zone of known organic contamination of soil, groundwater or soil vapor, then a sample from the water line shall be collected at the nearest location where any impact may exist and that sample shall be analyzed for the organic contaminants of concern. All such samples should be collected at times following minimum movement within the water line (e.g., early morning following a weekend).

ITEM 7. Amend rule 567—137.8(455H) by adopting the following new subrule:

**137.8(6)** Public notification. Before or upon completion of the site assessment the participant shall provide the department with the names and addresses of the owners and occupants of all property adjacent to the site enrolled in the land recycling program and any additional properties where contaminants from the enrolled site have migrated or are likely to migrate in the future. The department shall notify by direct mailing all such property owners and occupants, the city or county in which the property is located, and officials of any potentially impacted public water supply of the site's enrollment in the land recycling program and of the scope of work described in the participation agreement. The department shall give the notified parties the opportunity to obtain updates regarding the status of activities relating to the site that is enrolled in the land recycling program. The department may also require the participant of a site enrolled in the land recycling program to publish public notice in a local newspa-

per if the department determines that widespread interest in the site exists or is likely to exist. The department may provide additional opportunities for public participation if, after consultation with the participant, the department determines such opportunities are warranted.

ITEM 8. Amend subrule **137.9(9)** by adopting the following new paragraph at the end thereof:

The department shall provide opportunity to comment on proposed response actions to any party that is potentially impacted by off-site migration of contaminants for which notification is required in accordance with subrule 137.8(6). The department shall consider reasonable comments from potentially impacted parties in determining whether to approve or disapprove a proposed response action or site closure.

ITEM 9. Amend rule 567—137.10(455H) by renumbering subrules **137.10(7)** and **137.10(8)** as **137.10(8)** and **137.10(9)** and adopting the following new subrule 137.10(7):

**137.10(7)** Compliance with cumulative risk. In addition to compliance with standards for individual contaminants as prescribed above, cumulative risk criteria must also be attained. Cumulative carcinogenic health risks shall not exceed 1 in 10,000. Noncarcinogenic health risks affecting the same target organ shall not exceed a cumulative hazard quotient of 1. Cumulative risk criteria are applicable to multiple contaminants in the same medium and multiple media in which exposure is likely to occur to the same individual. Cumulative risks shall be based on the same exposure assumptions that are used for determining the selected standard.

Risks associated with background levels of contaminants shall not be included in the cumulative risk determination. Background levels of contaminants shall be determined in accordance with subrule 137.10(4) or, if approved by the department, by the use of generally available information on background levels of contaminants.

In situations where the risk associated with exposure to a contaminant at a concentration equal to the selected standard is greater than the acceptable cumulative risk, the cumulative risk may be calculated assuming the risk associated with exposure to the contaminant at a concentration equal to the selected standard is equal to the acceptable cumulative risk criterion. The department will provide a guidance document for calculating cumulative risk and make it readily available to the public.

## ARC 3295B

### IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to amend 581—Chapter 21, “Iowa Public Employees' Retirement System,” and to adopt 495—Chapter 4, “Em-

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ployers," 495—Chapter 5, "Employees," and 495—Chapter 6, "Covered Wages," Iowa Administrative Code.

The purpose of this proposed rule making is to rescind the following rules, the content of which is contained in new 495—Chapter 4: rule 581—21.2(97B) Records to be kept by the employer, rule 581—21.3(97B) Liable employers, rule 581—21.6(97B) Wage reporting and payment of contributions by employers, and rule 581—21.7(97B) Accrual of interest.

IPERS also proposes to rescind rule 581—21.5(97B) Identification of employees covered by the IPERS retirement law. The content of rule 581—21.5(97B) is contained in new 495—Chapter 5.

IPERS also proposes to amend and transfer rule 581—21.4(97B) Definition of wages for employment during the calendar quarter—other definitions. The content of rule 581—21.4(97B) is contained in new 495—Chapter 6.

Differences between the rescinded rules and the rules in new Chapter 4 include:

1. Paragraph 4.1(1)"d" clarifies that IPERS is not required to provide benefits for periods of service prior to the date that IPERS actually receives notice from the employer, unless the employer agrees to pay the full actuarial cost of providing such benefits.

2. Subrule 4.2(3) establishes the requirement that beginning December 31, 2004, employers whose classes include correctional officers, correctional supervisors, and others whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline within a correctional facility submit at the end of each calendar year a list of jobs that qualify for protection occupation class coverage.

3. Subrules 4.6(2) and 4.6(3) implement the statutory contribution rates for special service members recommended by IPERS' actuary pursuant to Iowa Code sections 97B.49B and 97B.49C.

For purposes of clarification and consistency, technical changes have been made to standardize phrasing and to renumber rules as necessary.

IPERS intends to continue to rescind its rules under 581—Chapter 21 over the next year and to transfer the content of those rules into the chapters of IPERS[495].

These amendments were prepared after consultation with the IPERS legal, benefits, investments and operational units and the benefits advisory committee.

There are no new waiver provisions included in the proposed new rules. Any person may make written suggestions or comments on the proposed amendments on or before May 4, 2004. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045, or by E-mail to [info@ipers.org](mailto:info@ipers.org).

There will be a public hearing at 9 a.m. on May 4, 2004, at IPERS, 7401 Register Drive, Des Moines, Iowa. Interested persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments are intended to implement Iowa Code chapter 97B as amended by 2003 Iowa Acts, chapter 145.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **581—21.2(97B)**, **581—21.3(97B)**, **581—21.4(97B)**, **581—21.5(97B)**, **581—21.6(97B)**, and **581—21.7(97B)**.

ITEM 2. Adopt the following **new** chapters:

#### CHAPTER 4 EMPLOYERS

##### **495—4.1(97B) Covered employers.**

**4.1(1) Definition.** All public employers in the state of Iowa, its cities, counties, townships, agencies, political subdivisions, instrumentalities and public schools are required to participate in IPERS. For the purposes of these rules, the following definitions also apply:

- a. "Political subdivision" means a geographic area or territorial division of the state which has responsibility for certain governmental functions. Political subdivisions are characterized by public election of officers and taxing powers. The following examples are representative: cities, municipalities, counties, townships, schools and school districts, drainage and levee districts, and utilities.

- b. "Instrumentality of the state or a political subdivision" means an independent entity that is organized to carry on some specific function of government. Public instrumentalities are created by some form of governmental body, including federal and state statutes and regulations, and are characterized by being under the control of a governmental body. Such control may include final budgetary authorization, general policy development, appointment of a board by a governmental body, and allocation of funds.

- c. "Public agency" means state agencies and agencies of political subdivisions. Representative examples include an executive board, commission, bureau, division, office, or department of the state or a political subdivision.

- d. Effective July 1, 1994, the definition of employer includes an area agency on aging that does not offer an alternative plan to all of its employees that is qualified under the federal Internal Revenue Code.

Covered employers include, but are not limited to: the state of Iowa and its administrative agencies; counties, including their hospitals and county homes; cities, including their hospitals, park boards and commissions; recreation commissions; townships; public libraries; cemetery associations; municipal utilities including waterworks, gasworks, electric light and power; school districts including their lunch and activity programs; state colleges and universities; and state hospitals and institutions.

Any employing unit not already reporting to IPERS which fulfills the conditions with respect to becoming an employer shall immediately give notice to IPERS of that fact. Such notice shall set forth the name and address of the employing unit, and such other information as may be required by IPERS in its status determination form. If, after review of this information, IPERS determines that the applicant should be treated as a covered employer, IPERS will contact the employer and provide it with a unique account number to use when submitting information to IPERS. IPERS shall not be required to provide benefits otherwise available under Iowa Code chapter 97B for periods of service prior to the date on which IPERS actually receives such notice, unless the employer agrees to pay the full actuarial cost of providing such benefits.

**4.1(2) Name change.** Any employing unit which has a change of name, address, title of the unit, its reporting official or any other identifying information shall immediately give notice in writing to IPERS. The notice shall provide IPERS with the following information:

- a. Former name;
- b. Former address;
- c. IPERS account number;

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

d. New name, address, and telephone number of the employing unit;

e. Reason for the change if other than a change of reporting official; and

f. Effective date of the change.

**4.1(3) Termination.** Any employing unit which terminates or is dissolved for any reason shall provide IPERS with the following:

a. Complete name and address of the dissolved entity;

b. Assigned IPERS account number;

c. Last date on which wages were paid;

d. Date on which the entity dissolved;

e. Reason for the dissolution;

f. Whether or not the entity expects to pay wages in the future;

g. Whether the entity is being absorbed by another covered employer;

h. Name and address of absorbing employer unit if applicable; and

i. Name and address of employer that will retain the records of the dissolved entity.

**4.1(4) Reports of dissolved or absorbed employers.** An employing unit that has been dissolved or entirely absorbed by another employing unit is required to file a quarterly or monthly report with IPERS through the last date on which it legally existed. Any wages paid after the legal date of dissolution are reported under the account number assigned to the new or successor employing unit, if any.

**4.1(5) IPERS account number.** Each reporting unit is assigned an IPERS account number. This number should be used on all correspondence and reporting forms directed to IPERS.

**4.1(6) For patient advocates employed under Iowa Code section 229.19,** the county or counties for which services are performed shall be treated as the covered employer(s) of such individuals, and each such employer is responsible for withholding and forwarding the applicable IPERS contributions on wages paid by each employer.

#### **495—4.2(97B) Records to be kept by the employer.**

**4.2(1) General.** Each employing unit shall maintain records to show the information hereinafter indicated. Records shall be kept in the form and manner prescribed by IPERS. Records shall be open to inspection and may be copied by IPERS and its authorized representatives at any reasonable time.

**4.2(2) Records shall show with respect to each employee:**

a. Employee's name, address and social security number;

b. Each date the employee was paid wages or other wage equivalent (e.g., room, board);

c. Total amount of wages paid on each date including noncash wage equivalents;

d. Total amount of wages including wage equivalents on which IPERS contributions are payable;

e. Amount withheld from wages or wage equivalents for the employee's share of IPERS contributions; and

f. Effective January 1, 1995, records will show, with respect to each employee, member contributions picked up by the employer.

**4.2(3) Reports.**

a. Each employing unit shall make reports as IPERS may require and shall comply with the instructions printed upon any report form issued by IPERS pertaining to the preparation and return of the report.

b. Effective July 1, 1991, employers must report all terminating employees to IPERS within seven working days

following the employee's termination date. This report shall contain the employee's last-known mailing address and such other information as IPERS might require.

c. Effective December 31, 2004, and annually thereafter, employers whose job classes include correctional officers, correctional supervisors, and others whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety and security within a correctional facility shall submit to IPERS each calendar year a list of jobs that qualify for protection occupation class coverage. This report shall also contain any changes in the designation of jobs as qualifying or not qualifying for protection occupation class coverage and effective dates of changes. IPERS' sole responsibility with respect to protection occupation status determinations is to ascertain whether IPERS' records correctly reflect service credit and contributions that are in accordance with the employer's designation of a position as being within a protection occupation class.

**4.2(4) Fees.** IPERS may assess to the employer a fee based on IPERS' actual cost incurred in correcting an employer's errors if an employer fails to file required documents and remittances accurately.

#### **495—4.3(97B) Wage reporting and payment of contributions by employers.**

**4.3(1) Payment of contributions.** Any public employing unit whose combined employer/employee IPERS contribution equals or exceeds \$100 per month is required to pay the contribution on a monthly basis. All other employing units are required to pay the contribution on a quarterly basis, at the same time that they file wage reports. When an employing unit becomes enrolled as an IPERS covered employer, IPERS will provide the appropriate forms and instructions for the submission and report of contributions and wage amounts.

Any employer filing monthly or quarterly employer remittance advice forms for two or more entities shall attach to each remittance form the checks covering the contributions due on that form. Improperly paid contributions are considered as unpaid.

All checks in payment of the total contribution shall be made payable to the Iowa Public Employees' Retirement System and mailed with the employer remittance advice to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117.

**4.3(2) Wage reports.** Each wage reporting form must include all employees who earned reportable wages or wage equivalents under IPERS. If an employee has no reportable wage in a quarter but is still employed by the employing unit, the employee's name should not appear on the report. Wage reports must be received by IPERS on or before the last day of the month following the close of the calendar quarter in which the wages were paid.

**4.3(3) Wage report and payment of contribution deadlines.**

a. For employers filing quarterly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the calendar quarter in which the wages were paid and at least five days prior to the wage reports filed for the same period. If the fifteenth falls on a weekend or holiday, the remittance is due on the next regularly scheduled workday.

b. For employers filing monthly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the month in which wages were paid and, for the third month of a quarter, at least five days prior to wage reports filed for

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

that quarter. If the fifteenth falls on a weekend or holiday, the remittance is due on the next regularly scheduled workday.

**4.3(4) Request for time extension.** A request for an extension of time to file a wage report or pay a contribution may be granted by IPERS for good cause if presented before the due date, but no extension shall exceed 15 days beyond the due date. If an employer that has been granted an extension fails to pay the contribution on or before the end of the extension period, interest shall be charged and paid from the original due date as if no extension had been granted. If the fifteenth day falls on a weekend or holiday, the remittance or report is due on the next regularly scheduled workday.

To establish good cause for an extension of time to file a wage report or pay contributions, the employer must show that the delinquency was not due to mere negligence, carelessness or inattention. The employer must affirmatively show that it did not file the report or timely pay because of some occurrence beyond the control of the employer.

**4.3(5) No reportable wages.** When an employer has no reportable wages or no wages to report during the applicable reporting period, the wage reporting document should be marked "no reportable wages" or "no wages" and returned to IPERS. Even if there are no reportable wages, the employing unit's account is considered delinquent for the reporting period until the report is filed.

**4.3(6) Penalties for noncompliance.** IPERS may impose reasonable penalties on employers that fail to timely file wage reports or pay a contribution when due.

**4.3(7) Substitute forms.** Substitute forms may be used if they meet all the IPERS reporting requirements.

**4.3(8) Employers reporting for 50 or more employees.** Employers reporting wages for 50 or more members in a quarter must submit this information via magnetic media (tape, floppy diskette or cartridge). IPERS also accepts wage reports electronically via IPERS' connection on-line system (ICON). Noncompliance will result in an administrative charge of \$50 issued as a debit to the employer's account for each quarter of noncompliance.

**495—4.4(97B) Accrual of interest.** Interest or charges as provided under Iowa Code section 97B.9 shall accrue on any contributions not received by IPERS by the due date, except that interest or charges may be waived by IPERS upon request prior to the due date by the employing unit, if due to circumstances beyond the control of the employing unit.

**495—4.5(97B) Credit memos voided.** Effective July 1, 1992, credit memos that have been issued due to an employer's overpayment are void one year after issuance.

**495—4.6(97B) Contribution rates.** The following contribution rate schedule, payable on the covered wage of the member, is determined by the position or classification and the occupation class code of the member.

**4.6(1)** All covered members, except those identified in 4.6(2) and 4.6(3).

- a. Member's rate—3.7%.
- b. Employer's rate—5.75%.

**4.6(2)** Sheriffs, deputy sheriffs, and airport firefighters, effective July 1, 2004.

- a. Member's rate—5.10%.
- b. Employer's rate—7.66%.

**4.6(3)** Members employed in a protection occupation, effective July 1, 2004.

- a. Member's rate—6.16%.
- b. Employer's rate—9.23%.

**4.6(4)** Members employed in a "protection occupation" shall include:

a. Conservation peace officers. Effective July 1, 2002, all conservation peace officers, state and county, as described in Iowa Code sections 350.5 and 456A.13.

b. Effective July 1, 1994, a marshal in a city not covered under Iowa Code chapter 400 or a firefighter or police officer of a city not participating under Iowa Code chapter 410 or 411. (See employee classifications in rule 495—5.1(97B).)

Effective January 1, 1995, part-time police officers.

c. Correctional officers as provided for in Iowa Code section 97B.49B.

Employees who, prior to December 22, 1989, were in a "correctional officer" position but whose position is found to no longer meet this definition on or after that date, shall retain coverage, but only for as long as the employee is in that position or another "correctional officer" position that meets this definition. Movement to a position that does not meet this definition shall cancel "protection occupation" coverage.

d. Airport firefighters employed by the military division of the department of public defense. Effective July 1, 1994, airport firefighters employed by the military division of the department of public defense shall pay the same contribution rate, and receive benefits under the same formula, as sheriffs and deputy sheriffs. Service under this paragraph shall include all membership service in IPERS as an airport firefighter.

e. Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city with a population of 100,000 or more, and employees covered by the Iowa Code Supplement chapter 8A merit system whose primary duties are providing airport security and who carry or are licensed to carry firearms while performing those duties.

f. Effective July 1, 1990, an employee of the state department of transportation who is designated as a "peace officer" by resolution under Iowa Code section 321.477.

g. Effective July 1, 1992, a fire prevention inspector peace officer employed by the department of public safety. Effective July 1, 1994, a fire prevention inspector peace officer employed before that date who does not elect coverage under Iowa Code chapter 97A in lieu of IPERS.

h. Effective July 1, 1994, through June 30, 1998, a parole officer III with a judicial district department of correctional services.

i. Effective July 1, 1994, through June 30, 1998, a probation officer III with a judicial district department of correctional services.

**4.6(5)** Regular service reclassified as special service. Except as otherwise indicated in the implementing legislation or these rules, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall be coded by IPERS staff as special service if certified by the employer as constituting special service under current law. No additional contributions shall be required by regular service reclassified as special service under this paragraph.

**4.6(6)** Prior special rates are as follows:

Effective July 1, 2002, through June 30, 2003:

a. Sheriffs, deputy sheriffs, and airport firefighters:

- (1) Member's rate—5.37%.
- (2) Employer's rate—8.05%.

b. Protection occupation:

- (1) Member's rate—6.04%.
- (2) Employer's rate—9.07%.

**4.6(7)** Pretax.

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

a. Effective January 1, 1995, employers must pay member contributions on a pretax basis for federal income tax purposes only. Such contributions are considered employer contributions for federal income tax purposes and employee contributions for all other purposes. Employers must reduce the member's salary reportable for federal income tax purposes by the amount of the member's contribution.

b. Salaries reportable for purposes other than federal income tax will not be reduced, including for IPERS, FICA, and, through December 31, 1998, state income tax purposes.

c. Effective January 1, 1999, employers must pay member contributions on a pretax basis as provided in 4.6(7)“a” above for both federal and state income tax purposes.

**495—4.7(97B) Enrollment of new employees by covered employers.** Effective September 1, 2002, covered employers shall be required to enroll new employees prior to reporting wages for the new employees. Enrollment information shall include, but is not limited to, the following: member's name, social security number, date of birth, gender, and mailing address, and employer identification number. Employers may submit enrollment information for new employees on paper, but are encouraged to use magnetic media or Internet enrollment when available. A wage report filed by an employer through the Internet when IPERS makes the option available shall be rejected if the report contains new employees who have not yet been enrolled in the IPERS system.

**495—4.8(97B) Additional employer contributions from employer-mandated reduction in hours.** This rule applies only to the restoration of covered wages caused by an employer-mandated reduction in hours (EMRH). It does not apply to reductions in base wages or to permanent layoffs or other termination of employment situations.

**4.8(1)** A member may restore the member's three-year average covered wage to the amount that it would have been but for an EMRH by completing the IPERS application for additional employer contributions and payroll deduction authorization.

**4.8(2)** A member cannot pay the additional employer contributions described under this rule in any manner except through payroll deductions.

**4.8(3)** The payroll deductions authorization described under this rule shall be irrevocable, except upon death, retirement or termination of employment. If revoked by the member's death, retirement, or termination of employment, all amounts held by an employer in the member's name shall be forwarded to the member along with the member's final wages.

**4.8(4)** A member may obtain a refund of amounts contributed under this rule as part of a refund of the member's entire account balance, but a member who chooses a retirement allowance shall not receive a refund of any amounts contributed, even if the covered wages being restored are not used in the member's three-year average covered wage.

**4.8(5)** A member may have the payroll deductions authorized in this rule made in more than one installment, but if the amount to be contributed to IPERS is less than \$100, the full amount must be deducted from one payroll payment, if the member has at least \$100 of wages available after other deductions required by law.

**4.8(6)** A covered employer must cooperate with an eligible employee's request for payroll deductions using the applicable IPERS forms. Employers collecting the additional retirement contributions authorized in this rule shall be required to complete a certificate showing the covered wages actually paid to the member in the affected quarters and the

covered wages that would have been reported but for the EMRH.

**4.8(7)** Employers shall collect and hold amounts to be contributed pursuant to this rule until the full amount can be forwarded to IPERS in one installment.

**4.8(8)** In completing the federal wage reporting forms to be filed with the federal and state tax authorities, an employer shall treat amounts collected and forwarded the same as pretax IPERS employee contributions.

**4.8(9)** Upon receipt, IPERS shall credit the amounts collected and forwarded in this rule to the member's account as pretax employee contributions. Adjustments to the employee's wage records shall be made as indicated in the employer's certification of covered wages that would have been reported but for the EMRH.

**4.8(10)** The collection of contributions under this program shall terminate as of midnight, December 31, 2003. Amounts collected must be forwarded by a covered employer no later than the March 31, 2004, contribution filing deadline.

These rules are intended to implement Iowa Code Supplement sections 97B.49A to 97B.49I.

## CHAPTER 5 EMPLOYEES

### **495—5.1(97B) Identification of employees covered by the IPERS retirement law.**

**5.1(1)** Definition of employee—generally. A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term “control” refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an “employee” as defined in the agreement between the state of Iowa and the Secretary of Health and Human Services, without the element of direction and control.

A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration.

**5.1(2)** Optional coverage procedures—July 1, 1994, through December 31, 1998. Effective July 1, 1994, a person who is employed in a position which allows IPERS coverage to be elected as specified in Iowa Code section 97B.1A(8) must file a one-time election form with IPERS for coverage. If the person was employed before July 1, 1994, the election must be postmarked on or before July 1, 1995. If the person was employed on or after July 1, 1994, the election must be postmarked within 60 days from the date the person was employed. Coverage will be prospective from the date the election is approved by IPERS. The election, once filed, is irrevocable and continues until the member terminates covered employment. The election window does not allow members who had been in coverage to elect out.

**5.1(3)** Election out of Iowa Code chapter 97B coverage by certain protection occupation groups. Effective July 1, 1994, members employed before that date as a gaming enforcement officer, a fire prevention inspector peace officer, or an employee of the division of capital police (except clerical workers) may elect coverage under Iowa Code chapter 97A in lieu of IPERS. The election must be directed to the board of trust-

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ees established in Iowa Code section 97A.5 and postmarked on or before July 1, 1995.

**5.1(4)** Optional coverage procedures—January 1, 1999. Effective January 1, 1999, new hires who may elect out of IPERS coverage shall be covered on the date of hire and shall have 60 days to elect out of coverage in writing using IPERS' forms. Notwithstanding the foregoing, employees who had the right to elect IPERS coverage prior to January 1, 1999, but did not do so, shall be covered as of January 1, 1999, and shall have until December 31, 1999, to elect out of coverage.

**495—5.2(97B) Coverage treatment for specific employee classifications.** Employment as defined in Iowa Code chapter 97B is not synonymous with IPERS membership. Some classes of employees are explicitly excluded or membership is made optional under Iowa Code section 97B.1A(8)“b,” while other classes are excluded or membership is made optional by their nature. The following subrules are designed to clarify the status of certain employee positions.

**5.2(1)** Elected officials. Effective January 1, 1999, the following persons shall be covered by IPERS unless they elect out of coverage:

- a. Elected officials in positions for which the compensation is on a fee basis;
- b. Elected officials of school districts;
- c. Elected officials of townships; and
- d. Elected officials of other political subdivisions who are in part-time positions.

An elected official who becomes covered under this chapter may later terminate membership by informing IPERS in writing of the expiration of the member's term of office or, if a member of the general assembly, of the intention to terminate coverage.

An elected official does not terminate covered employment with the end of each term of office if the official has been reelected for the same position. If elected for another position, the official shall be covered unless the official elects out of coverage.

**5.2(2)** County and municipal court bailiffs who receive compensation for duties shall be covered.

**5.2(3)** Full-time city attorneys shall be covered. Part-time city attorneys who are considered to be public officers or public employees shall be covered.

**5.2(4)** Magistrates shall be covered unless they elect out of IPERS coverage. Having made a choice to remain in IPERS coverage, a magistrate may not revoke that election and discontinue such coverage.

**5.2(5)** Office and clerical staff of a county medical examiner's office shall be covered. Effective January 1, 1995, county medical examiners and deputy county medical examiners who are full-time county employees shall be covered.

**5.2(6)** Police, firefighters, emergency personnel, and certain peace officers.

- a. Effective July 1, 1994, police officers and firefighters of a city not participating in the retirement systems established under Iowa Code chapter 410 or 411 shall be covered.

- b. Emergency personnel, such as ambulance drivers, who are deemed to be firefighters by the employer shall be covered as firefighters.

- c. Effective January 1, 1995, part-time police officers shall be covered in the same manner as full-time police officers.

- d. Reserve peace officers employed under Iowa Code chapter 80D shall not be covered in accordance with Iowa Code section 80D.14.

- e. A police chief or fire chief who has submitted a written request to the board of trustees created by Iowa Code section 411.36 to be exempt from coverage under Iowa Code chapter 411 shall not be covered under IPERS in accordance with Iowa Code sections 384.6(1) and 411.3. The city shall make on behalf of such person the contributions required under Iowa Code section 384.6(1) to the International City Management Association/Retirement Corporation.

- f. Peace officer candidates of the department of public safety shall not be covered.

**5.2(7)** County social welfare employees shall be covered.

**5.2(8)** Members of county soldiers relief commissions and their administrative or clerical employees shall be covered.

**5.2(9)** Part-time elected mayors, mayors of townships, and mayors who are paid on a fee basis shall be covered under IPERS unless they elect out of coverage. All other mayors, including appointed mayors and full-time elected mayors, whether elected by popular vote or by some other means, shall be covered.

**5.2(10)** Field assessors shall be covered.

**5.2(11)** Members of county boards of supervisors who receive an annual salary shall be covered. Effective for terms of office beginning January 1, 1999, part-time members of county boards of supervisors who receive an annual salary or are paid on a per diem basis shall be covered unless they elect out of coverage.

**5.2(12)** Temporary employees of the general assembly who are employed for less than six months in a calendar year or work less than 1,040 hours in a calendar year shall be covered unless the employee elects out of coverage. If coverage is elected, the member may not terminate coverage until termination of covered employment.

**5.2(13)** Temporary employees shall not be covered provided that they have not established an ongoing relationship with an IPERS-covered employer. Effective January 1, 1993, an ongoing relationship with an IPERS-covered employer is established when:

- a. The employee is paid covered wages of \$300 or more per quarter in two consecutive quarters; or

- b. If the employee is employed by a covered employer for 1,040 or more hours in a calendar year.

Coverage shall begin when the permanency of the relationship is established and shall continue until the employee's relationship with the covered employer is severed. If there is no formal severance, coverage for a person hired for temporary employment who has established an ongoing relationship with a covered employer shall continue until that person completes four consecutive calendar quarters in which no services are performed for that employer after the last covered calendar quarter.

No service credit shall be granted to a temporary employee who has become a covered employee under this rule for any quarter in which no covered wages are reported unless the employee is on a leave of absence that qualifies for service credit under Iowa Code section 97B.1A(20). Contributions shall be paid, and service credit shall be accrued, when wages are paid in the quarter after the ongoing relationship has been established.

**5.2(14)** Drainage district employees who have vested rights to IPERS through earlier participation or employees of drainage districts shall be covered unless they elect out of coverage.

**5.2(15)** Full-time and part-time county attorneys shall be covered.

**5.2(16)** Tax study committee employees shall be covered.

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**5.2(17)** School bus drivers who are considered to be public employees shall be covered. School bus drivers who are independent contractors shall not be covered. A determination must be made by IPERS on the facts presented on a case-by-case basis.

**5.2(18)** Persons who are enrolled as students and whose primary occupations are as students shall not be covered. Full-time or part-time students employed part-time by the educational institution where they are enrolled shall not be covered. All other students beyond high school are not exempt from IPERS coverage. Full-time and part-time student status is as defined by the individual educational institutions. Full-time and part-time employment status is as defined by the individual employers.

The paragraph above shall not be construed to require or permit IPERS coverage for high school students and students in the lower grades who are concurrently employed (including employment during breaks between quarters, semesters, or annual academic terms) by a covered employer.

**5.2(19)** Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants and specialists in their fields of specialized knowledge or skill shall not be covered.

**5.2(20)** Members of any other retirement system in Iowa maintained in whole or in part by public funds shall not be covered. However, effective July 1, 1996, an employee who has two jobs, one covered by IPERS and one covered by another retirement system in Iowa, shall remain an IPERS covered employee, unless the employee receives credit in such other retirement system for both jobs.

**5.2(21)** Members who are contributing to the federal civil service retirement system or federal employees retirement system shall not be covered. However, effective July 1, 1996, an employee who has two jobs, one covered by IPERS and one covered by a federal retirement system, shall be considered as an IPERS covered employee, unless the employee receives credit in such federal retirement system for both jobs.

**5.2(22)** Employees of credit unions without capital stock organized and operated for mutual purposes without profit shall not be covered.

**5.2(23)** Members of the ministry, rabbinate or other religious order who perform full-time or part-time religious service for a covered employer shall be covered. However, members of the ministry, rabbinate or other religious order who have taken the vow of poverty may elect out of coverage.

**5.2(24)** Any physician, surgeon, dentist or member of other professional groups employed full-time by a covered employer shall be covered. However, any member of a professional group who performs part-time service for any public agency but whose private practice provides the major source of income shall not be covered, except for city attorneys and health officials.

**5.2(25)** Interns and resident doctors employed by a state or local hospital, school or institution shall not be covered.

**5.2(26)** Professional personnel who acquire the status of an officer of the state of Iowa or a political subdivision thereof, even though they engage in private practice and render government service only on a part-time basis, shall be covered.

**5.2(27)** Effective July 1, 1994, volunteer firefighters and special police officers are considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13).

**5.2(28)** Residents or inmates of county homes shall not be covered.

**5.2(29)** Members of the state transportation commission, the board of parole, and the state health facilities council shall be covered unless they elect out of coverage.

**5.2(30)** Employees of an interstate agency established under Iowa Code chapter 28E, and similar enabling legislation in an adjoining state, if the city had made contributions to the system for employees performing functions which are transferred to the interstate agency shall be considered employees of the city for the sole purpose of membership in IPERS, although the employer contributions for those employees are made by the interstate agency.

**5.2(31)** City managers, or city administrators performing the duties of city managers, under a form of city government listed in Iowa Code chapter 372 or 420 shall be covered unless they elect out of coverage.

**5.2(32)** Employees appointed by the state board of regents shall be covered unless, at the discretion of the state board of regents, they elect coverage in an alternate retirement system qualified by the state board of regents.

**5.2(33)** School employees who work in additional positions along with normal duties with the same employer shall be considered covered employees until all of their compensated duties to their employer cease. (Examples include teacher/coach; teacher/summer driver's education instructor; and Phase I, II, and III employment.)

**5.2(34)** Adjunct instructors employed by a community college or university shall not be covered. Adjunct instructors are persons employed by a community college or university without a continuing contract and whose teaching load does not exceed one-half time for two full semesters or three full quarters for the calendar year. The determination of whether a teaching load exceeds one-half time shall be based on the number of credit hours or noncredit contact hours that the community college or university considers to be a full-time teaching load for a regular full semester or quarter. An adjunct instructor whose teaching load exceeds the foregoing limitations shall be covered.

In determining whether an adjunct instructor is a covered employee, no credit shall be granted for teaching periods of shorter duration than a regular semester or regular quarter (such as summer semesters), regardless of the number of credit or contact hours assigned to that period.

If there is no formal severance, an adjunct instructor who becomes a covered employee shall remain a covered employee until that person completes four consecutive calendar quarters in which no services are performed for that covered employer after the last covered calendar quarter. Notwithstanding the foregoing sentence, no service credit will be granted to any adjunct instructor who has become a covered employee under this rule for any calendar quarter in which no covered wages are reported unless the adjunct instructor is on an approved leave of absence that qualifies for service credit under Iowa Code section 97B.1A(20).

**5.2(35)** Effective July 1, 1992, enrollees of a senior community service employment program authorized by Title V of the Older Americans Act and funded by the United States Department of Labor are not covered unless:

a. Both the enrollee and the covered employer elect coverage; or

b. The enrollee is currently contributing to IPERS.

For purposes of this subrule only, a covered employer is defined as the host agency where the enrollee is placed for training.



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**5.2(36)** Employees of area agencies on aging are included. However, effective July 1, 1994, employees of area agencies on aging shall not be covered if the area agency has provided for participation by all of its eligible employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code. If an area agency on aging does not participate in an alternative plan, or terminates participation in such plan, IPERS coverage shall begin immediately.

**5.2(37)** Effective July 1, 1994, arson investigators shall not be covered. They were transferred to the public safety peace officers' retirement, accident and disability system as found in Iowa Code chapter 97A.

**5.2(38)** Persons who meet the requirements of independent contractor status as determined by IPERS using the criteria established by the federal Internal Revenue Service shall not be covered.

**5.2(39)** Effective July 1, 1994, a person employed on or after that date for certain public safety positions shall not be covered. These positions are gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities, fire prevention inspector peace officers, and employees of the division of capitol police (except clerical workers).

**5.2(40)** Employees of area community colleges shall be covered unless they elect coverage under an alternative system pursuant to a one-time irrevocable election.

**5.2(41)** Volunteer emergency personnel, such as ambulance drivers, shall be considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13). Persons who meet such requirements shall be covered under the protection occupation requirements of Iowa Code section 97B.49B(16) if they are considered firefighters by their employers; otherwise they shall be covered under Iowa Code section 97B.11.

**5.2(42)** Persons employed through any program described in Iowa Code section 84A.7 and provided by the Iowa conservation corps shall not be covered.

**5.2(43)** Appointed and full-time elective members of boards and commissions who receive a set salary shall be covered. Effective January 1, 1999, part-time elective members of boards and commissions not otherwise described in these rules who receive a set salary shall be covered unless they elect out of coverage. Members of boards, other than county boards of supervisors, and commissions, including appointed and elective full-time and part-time members, who receive only per diem and expenses shall not be covered.

**5.2(44)** Persons receiving rehabilitation services in a community rehabilitation program, rehabilitation center, sheltered workshop, and similar organizations whose primary purpose is to provide vocational rehabilitation services to target populations shall not be covered.

**5.2(45)** Persons who are members of a community service program authorized under and funded by grants made pursuant to the federal National and Community Service Act of 1990 shall not be covered.

**5.2(46)** Persons who are employed by professional employment organizations, temporary staffing agencies, and similar noncovered employers and are leased to covered employers shall not be covered. Notwithstanding the foregoing, persons who are employed by a covered employer and leased to a noncovered employer shall be covered.

**5.2(47)** Effective July 1, 1999, persons performing referee services for a covered employer shall not be covered, unless the performance of such services is included in the persons' regular job duties for the employer for which such services are performed.

**5.2(48)** Effective July 1, 2000, patient advocates appointed under Iowa Code section 229.19 shall be covered.

**5.2(49)** Employees of the Iowa student loan liquidity corporation shall not be covered.

**495—5.3(97B) Participation in IPERS and another retirement system.** Effective July 1, 1996, an employee may actively participate in IPERS and another retirement system supported by public funds if the person does not receive credit under both IPERS and such other retirement system for any position held.

These rules are intended to implement Iowa Code Supplement chapter 97B.

## CHAPTER 6 COVERED WAGES

**495—6.1(97B) IRS requirements.** Wages as discussed in this chapter shall not exceed the amount permitted for a given year under Section 401(a)(17) of the Internal Revenue Code.

**495—6.2(97B) Definition of wages.** "Wages" means all compensation earned by employees including, except as otherwise provided under this chapter, vacation pay; sick pay; bonus payments; back pay; dismissal pay; amounts deducted from the employee's pay at the employee's discretion for tax-sheltered annuities, dependent care and cafeteria plans; and the cash value of wage equivalents. This definition applies to these rules, regulations, interpretations, forms and other IPERS publications unless the context otherwise requires.

**495—6.3(97B) IPERS coverage for various forms of compensation.** The following is a list of various types of compensation and the corresponding IPERS coverage treatment:

**6.3(1)** Vacation pay or annual leave pay. Vacation pay or annual leave pay means the amount paid to an employee during a period of vacation.

**6.3(2)** Sick pay. Sick pay means payments made for sick leave which are a continuation of salary payments.

**6.3(3)** Workers' compensation payments and other third-party payments. Workers' compensation payments, unemployment payments, or short-term and long-term disability payments made by an insurance company or third-party payer, such as a trust, are not included as wages. Payments for sick leave which are a continuation of salary payments if paid from the employer's general assets, regardless of whether the employer labels the payments as sick leave, short-term disability, or long-term disability, are covered wages.

**6.3(4)** Compensatory time. Wages include amounts paid for compensatory time taken in lieu of regular work hours or when paid as a lump sum. However, compensatory time paid in a lump sum shall not exceed 240 hours per employee per year or any lesser number of hours set by the employer. Each employer shall determine whether to use the calendar year or a fiscal year other than the calendar year when setting its compensatory time policy.

**6.3(5)** Banked holiday pay. If an employer codes banked holiday time as holiday or additional accrued vacation time, the banked holiday pay will be vacation pay under subrule 6.3(1). If an employer codes banked holiday pay as compensatory time, the banked holiday time will be combined with compensatory time and subject to the limits set forth in subrule 6.3(4).

**6.3(6)** Special lump sum payments. Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to

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retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. Wages do not include: catastrophic leave paid in a lump sum, recruitment bonuses, tips or honoraria. Exclusion of payments as described in this subrule applies whether the payment is in a lump sum or in installments.

**6.3(7)** Other special payment arrangements. Wages do not include amounts paid pursuant to special arrangements between an employer and employee whereby the employer pays increased wages and the employee reimburses the employer or a third-party obligor for all or part of the wage increase. This limitation includes, but is not limited to, the practice of increasing an employee's wages by the employer's share of health care costs and having the employee reimburse the employer or a third-party provider for such health care costs. Wages do not include amounts paid pursuant to a special arrangement between an employer and employee whereby wages in excess of the covered wage ceiling for a particular year are deferred to one or more subsequent years. Wages do not include employer contributions to a plan, program or arrangement that are not included in the employee's federal taxable income. However, certain employer contributions under IRC Section 125 plans are permitted to be treated as covered wages under rule 581—6.5(97B) subject to the terms of that rule.

Employers and employees that knowingly and willfully enter into the types of arrangements described in this subrule, causing an impermissible increase in the payments authorized under Iowa Code chapter 97B, may be prosecuted under Iowa Code section 97B.40 for engaging in a fraudulent practice. If IPERS determines that its calculation of a member's monthly benefit includes amounts paid under an arrangement described in this subrule, IPERS shall recalculate the member's monthly benefit, after making the appropriate wage adjustments. IPERS may recover the amount of overpayments caused by the inclusion of the payments described in this subrule from the monthly amounts plus interest payable to the member or amounts payable to the member's successor(s) in interest, regardless of whether or not IPERS chooses to prosecute the employers and employees under Iowa Code section 97B.40.

**6.3(8)** Wage equivalents. Items such as food, lodging and transportation are includable as employee income, if they are paid as compensation for employment. The basic test is whether or not such wage equivalent was given for the convenience of the employee or employing unit. Wage equivalents are not reportable under IPERS if given for the convenience of the employing unit or are not reasonably quantifiable. Wage equivalents that are not included in the member's federal taxable income shall be deemed to be for the convenience of the employer. A wage equivalent is not reportable if the employer certifies that there was a substantial business reason for providing the wage equivalent, even if the wage equivalent is included in the employee's federal taxable income. Wages paid in any other form than money are measured by the fair market value of the meals, lodging, travel or other wage equivalents.

**6.3(9)** Members of the general assembly. Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary. Wages include per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages do not include expense payments except that, effective July 1, 1990, wages include daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly. Such non-

travel expenses of office during a session of the general assembly shall not exceed the maximum established by law for members from Polk County. A member of the general assembly who has elected to participate in IPERS shall receive four quarters of service credit for each calendar year during the member's term of office, even if no wages are reported in one or more quarters during a calendar year.

**6.3(10)** Wages paid as a back pay settlement. IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 6.3(6) and shall not be covered.

**6.3(11)** Wages restored following mandatory or voluntary reduction in hours. Notwithstanding rule 495—6.4(97B), wages restored following the receipt of contributions forwarded pursuant to 2002 Iowa Acts, chapter 1135, section 36, shall be credited to quarters in which they would have been received but for voluntary or employer-mandated reduction in hours (EMRH).

**6.3(12)** Wages for certain testing purposes. Wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include a member's gross wages, excluding nontaxable fringe benefits and all amounts placed in tax-deferred vehicles including, but not limited to, plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457, and excluding IPERS contributions paid after December 31, 1994, by employers on behalf of employees. Effective January 1, 1996, the annual wages of a member taken into account for testing purposes under any of the applicable sections of the Internal Revenue Code shall not exceed the applicable amount set forth in Internal Revenue Code Section 401(a)(17), and any federal regulations promulgated pursuant to that section. The foregoing sentence shall not be deemed to permit the maximum amount of wages of a member taken into account for any other purpose under Iowa Code chapter 97B to exceed the maximum covered wage ceiling under Iowa Code section 97B.1A(26). Effective January 1, 1998, wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include elective deferrals placed in tax-deferred plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457 by employers on behalf of employees.

**495—6.4(97B) Quarter for which wages are to be reported.** Wages are reportable in the quarter in which they are actually paid to the employee, except when employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, wage restorations following EMRH, and similar situations authorized under Iowa Code chapter 97B, in which case the employer shall file wage adjustment reporting forms with IPERS allocating said wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

**6.4(1)** Actual and constructive receipt. An employer cannot report wages as having been paid to employees as of a quarterly reporting date if the employee has not actually or

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

constructively received the payments in question. For example, wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on June 30 would be reported as second quarter wages, but wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on July 3 would be reported as third quarter wages.

**6.4(2)** One quarter of service will be credited for each quarter in which a member is paid IPERS covered wages.

a. "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum as permitted for a given year under Section 401(a)(17) of the Internal Revenue Code.

b. Effective January 1, 1988, covered wages shall include wages paid a member regardless of age. (From July 1, 1978, until January 1, 1988, covered wages did not include wages paid a member on or after the first day of the month in which the member reached the age of 70.)

c. If a member is employed by more than one employer during the calendar year, the total amount of wages paid shall be included in determining the annual covered wage maximum. If the amount of wages paid to a member by several employers during a calendar year exceeds the covered wage limit, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11.

**495—6.5(97B) Covered wage treatment for employer contributions to IRC Section 125 plans.** If certain conditions are met, employer contributions to fringe benefit programs that qualify under IRC Section 125 may be treated as covered wages. The following subrules set forth IPERS' regulations for determining covered wage treatment and for making wage adjustments when employer-paid contributions have been covered or excluded in violation of the standards set forth below.

**6.5(1)** Section 125 plans. For purposes of this rule, a Section 125 plan means an employer-sponsored fringe benefit plan that is subject to Section 125 of the federal Internal Revenue Code. Some of the common names for this type of plan are cafeteria plan, flexible benefits plan, flex plan, and flexible spending arrangement.

**6.5(2)** Elective employer contributions. For purposes of this rule, "elective employer contributions" means employer contributions made to a Section 125 plan that can be received in cash or used to purchase benefits under the Section 125 plan. Generally, elective employer contributions that are not subject to special eligibility requirements qualify as covered wages.

**6.5(3)** Mandatory minimum coverage requirements. The term "elective employer contributions" does not include employer contributions that must be used to purchase benefits under a Section 125 plan. For example, if an employer provides \$2,500 to its employees to purchase benefits in a Section 125 plan, but requires that all employees must use \$1,000 of that amount to purchase single health coverage, the cost of the single coverage is deducted. In this example, \$1,000 would be subtracted from the \$2,500 provided, resulting in \$1,500 of covered wages.

**6.5(4)** Uniformity determined coverage group by coverage group. Iowa Code section 97B.1A(26)"a"(1)"b" states that elective employer contributions shall be treated as covered wages only if made uniformly available and not limited to highly compensated employees. The application of the uniformity concept may be illustrated as follows: Employer Z has two major groupings of employees covered under its cafeteria plan: teaching staff and support staff. Every member of the teaching staff is provided \$3,000 to purchase bene-

fits under the Section 125 plan. Every member of the teaching staff must take single coverage costing \$1,500. Every member of the support staff is provided \$2,500 and must also take the single coverage costing \$1,500. Each member of the teaching staff would have \$1,500 treated as covered wages, and each member of the support staff would have \$1,000 treated as covered wages. This would be considered uniform treatment.

Uniformity is not destroyed by the fact that the amount available to members of a coverage group varies because the actual cost of mandatory minimum coverage varies depending on actuarial factors that apply to each individual. For example, assume Employer Z above also requires each employee to have long-term disability coverage. In Employer Z's case, the actual cost of disability coverage will vary from individual to individual. In that case, Employer Z would also deduct the actual cost of the required disability coverage, individual by individual, when determining IPERS covered wages.

Uniformity is not destroyed if an employer has two groups of employees who, as a result of collective bargaining, have differing entitlements to employer contributions. For example, Employer Y has a contract that provides \$3,500 to each employee to purchase benefits under the Section 125 plan. Every employee may take all the cash by waiving participation in the plan, or may use all or part of the employer contributions to the Section 125 plan. In the collective bargaining process, a new contract is adopted which states that the employer will still provide \$3,500 to each employee to purchase benefits under the Section 125 plan. However, under the new contract, persons who waived participation before April 15 may still waive participation in the plan and take all the cash, but persons who did not waive participation and those hired after April 15 must have single coverage costing \$1,700. Employer Y would be treated as having two groups of employees with different elective employer contribution amounts. The grandfathered group (employees who waived participation before April 15) would have covered wages of \$3,500, and the group consisting of those who did not waive participation before April 15 and new employees would have covered wages of \$1,800.

**6.5(5)** Highly compensated employee test. Iowa Code chapter 97B provides that, in addition to being uniformly available, employer contributions must not discriminate in favor of highly compensated employees (HCEs). For purposes of this subrule, an HCE is an employee who has reported wages and tips subject to Medicare tax in excess of the IRC Section 414(q) limit then in effect. IPERS shall apply the HCE limitation as follows. If elective employer contributions are made available to HCEs, the total elective employer contributions made available to the HCE group must not exceed 25 percent of the total elective employer contributions made available under the Section 125 plan to all employees, including the HCEs. If the elective employer contributions available to the HCE group exceed the 25 percent limit (or if it is determined that the Section 125 plan discriminates in favor of HCEs under other IRS rules), elective employer contributions for HCEs shall not exceed the highest amount available to a nonexecutive coverage group of employees covered under such plan. The general application of these principles is illustrated below, using the 2002 IRC Section 414(q) dollar limit of \$90,000.

Employer W has a Section 125 plan that provides elective employer contributions totaling \$7,000 to executive staff, \$4,500 to teaching staff, and \$3,500 to support staff. There are no other limits or exclusions that apply. These amounts are treated as covered wages for each member of each group,

## IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

provided that the total amount of contributions made available to HCEs does not exceed 25 percent of the total elective employer contributions for all employees covered under the plan. If elective employer contributions for the executive staff totaled \$70,000, and total elective employer contributions for the remainder of the staff totaled \$500,000, the HCE percentage of total elective employer contributions would be 12 percent (\$70,000 divided by \$570,000), and all elective employer contributions would be treated as covered wages for all groups. However, if elective employer contributions for the executive staff totaled \$70,000, and elective employer contributions for the remainder of the staff totaled \$200,000, the HCE percentage would be 26 percent (\$70,000 divided by \$270,000), and HCEs' elective employer contributions would be limited to \$4,500 per HCE for covered wage purposes.

**6.5(6)** Elective employer contributions limited to dual coverage employees. In some cases, a Section 125 plan provides for what appear to be mandatory employer contributions for health plan coverage, but the terms of the Section 125 plan permit dual coverage employees to waive coverage and receive the employer contributions in cash, if the employee can prove coverage under another health care plan. IPERS shall continue to treat the full amount of employer contributions in such cases as not being IPERS covered wages, even though individual employees with the described dual coverage may actually receive the employer contribution in cash.

**6.5(7)** Corrections for overpayments and underpayments of contributions and benefits caused by Section 125 plan covered wage errors. IPERS shall use the following guidelines in requiring corrections for overpayments and underpayments of contributions and benefits caused by the erroneous inclusion or exclusion of employer contributions to a Section 125 plan. Corrections must be made for all active, terminated and retired members, subject to the following limitations:

a. If elective employer contributions that should have been covered were not covered, wage adjustments shall be filed, and employers shall be billed for all shortages plus interest. Employers shall be entitled to collect reimbursement for the employee share of contributions as provided in Iowa Code section 97B.9. If retirement benefits, death benefits or refunds have been underpaid as a result of the error, IPERS shall, upon receipt of the contribution shortage, make the appropriate adjustments and pay all back benefits.

b. If employer contributions that should not have been covered were covered, wage adjustments shall be filed, and the appropriate contribution amounts shall be repaid to employers for distribution to the respective employee and employer contributors. If the reporting error caused an overpayment of retirement benefits, death benefits, or refunds, IPERS shall offset excess contributions received against overpayments and shall request a repayment of the remainder of the overpayment, if any, from the recipient.

Wage adjustments, overpayments, and underpayments and unintentional reporting errors shall be determined as of the onset of the error, but shall be limited to three years before the beginning of the current contract year for school employers, or current fiscal year for all other covered employers. IPERS may go back to the onset of the error, even if the period exceeds three years, if the error is caused by intentional misconduct or gross neglect. Notwithstanding the foregoing adjustment and collection standards, IPERS reserves the right to negotiate adjustments with individual employers in special situations, and no negotiated settlement with an employer shall be deemed to constitute a waiver of this rule or a binding precedent for other employers.

**6.5(8)** Bounties. In some cases, an employer has a Section 125 plan with employer contributions, and what IPERS refers to as a bounty option. A bounty is an amount that may be elected by all employees, or by a subset of that group, such as employees with coverage under another health care plan, either in lieu of any coverage under the employer's health care plan, or in lieu of family coverage. A bounty is generally set at an amount that is less than the amount that would otherwise be available to purchase benefits under the Section 125 plan. IPERS does not treat bounties as covered wages. The uniformity and nondiscrimination principles described in subrule 6.5(4) do not apply to such benefits.

These rules are intended to implement Iowa Code Supplement section 97B.1A(26).

**ARC 3290B**

## MEDICAL EXAMINERS BOARD[653]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 8, “Fees,” and Chapter 12, “Mandatory Reporting and Grounds for Discipline,” Iowa Administrative Code.

The Board of Medical Examiners approved the amendments during a regularly scheduled meeting held on March 18, 2004.

The proposed amendments establish new fees, revise existing fees and establish repayment receipts as defined in Iowa Code section 8.2. The fee collected from an acupuncturist or physician for a duplicate wall certificate or renewal card will be considered a repayment receipt. The elements of the data lists and the fees will be changed to provide all data elements and eliminate customized lists and the added costs. The fee for obtaining the data list will be considered a repayment receipt. Whenever the Board requests a report from the National Practitioner Data Bank or the Healthcare Integrity and Protection Data Bank regarding an applicant or licensee, the cost of obtaining the report is included within the licensure fee, and that portion of the fee spent to obtain the report will be considered a repayment receipt. The Board may negotiate in a settlement agreement a provision for payment of \$100 per quarter to cover the Board's expenses in monitoring a licensee's compliance with the settlement agreement, and this fee will be considered a repayment receipt.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on May 4, 2004. Such written materials should be sent to Ann E. Mowery, Executive Director, Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or E-mailed to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

There will be a public hearing held on May 4, 2004, at 2 p.m. at the Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa. Interested persons may present their views either orally or in writing.

## MEDICAL EXAMINERS BOARD[653](cont'd)

These amendments are intended to implement Iowa Code sections 8.2 and 147.80.

The following amendments are proposed.

ITEM 1. Amend subrule **8.2(2)**, paragraph “e,” as follows:

e. Fee for a duplicate wall certificate or renewal card, \$25. *The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.*

ITEM 2. Amend subrule 8.4(6) as follows:

**8.4(6)** Fee for a duplicate wall certificate or renewal card, \$25. *The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.*

ITEM 3. Rescind rule 653—8.7(147,148,272C) and adopt in lieu thereof the following **new** rule:

**653—8.7(147,148,272C) Purchase of a licensee data list.**

A data list of all physicians and acupuncturists includes the following information about each licensee: full name, year of birth, mailing address, business telephone number, E-mail address, Iowa county (if applicable), medical school (if applicable), year of graduation from medical school (if applicable), two medical specialties (if available), license issue date, license expiration date, license number, license type, license status, and an indicator of whether the board has taken any public action on the license. The fee for an electronic file of the list is \$50. Payment made to the Iowa Board of Medical Examiners shall be received in the board office prior to the release of a list. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

ITEM 4. Adopt the following **new** rules:

**653—8.12(8,147,148,272C) Request for reports.** The board may request a report from the National Practitioner Data Bank or the Healthcare Integrity and Protection Data Bank regarding an applicant or licensee. The cost of obtaining the report is included within the fee for initial licensure or licensure reinstatement or renewal. However, that portion of the fee spent to obtain that report shall be considered a repayment receipt as defined in Iowa Code section 8.2.

**653—8.13(8,147,148,272C) Monitoring fee.** A provision for payment of \$100 per quarter to cover the board's expenses in monitoring a licensee's compliance with the settlement agreement may be included in the settlement agreement, and payments shall be considered repayment receipts as defined in Iowa Code section 8.2.

ITEM 5. Amend subrule 12.25(1) as follows:

**12.25(1)** A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case by the executive director, prosecuting attorney, *director of legal affairs*, or the respondent. No party is required to participate in the informal settlement process. The executive director and chairperson of the board, or ~~their~~ *the chairperson's* designee, shall have authority to negotiate on behalf of the board. *A provision for payment of \$100 per quarter to cover the board's expenses in monitoring a licensee's compliance with the settlement agreement may be included in the settlement agreement, and payments shall be considered repayment receipts as defined in Iowa Code section 8.2.*

**ARC 3289B**

**MEDICAL EXAMINERS  
BOARD[653]**

**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Standards of Practice and Professional Ethics,” Iowa Administrative Code.

The Board of Medical Examiners approved the amendment during a regularly scheduled meeting held on March 18, 2004. This amendment has been proposed at the request of the Board of Pharmacy Examiners.

The proposed amendment adds a registered pharmacist-intern to the list of those to whom an authorized pharmacist may delegate the administration of influenza and pneumococcal vaccines to adults. An authorized pharmacist is required to provide direct personal supervision when delegating such administration to a registered pharmacist-intern.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on May 4, 2004. Such written materials should be sent to Ann E. Mowery, Executive Director, Iowa Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or E-mail to [ann.mowery@iowa.gov](mailto:ann.mowery@iowa.gov).

There will be a public hearing held jointly by the Board of Medical Examiners and the Board of Pharmacy Examiners on May 4, 2004, at 1 p.m. at the Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa. Interested persons may present their views either orally or in writing.

This amendment is intended to implement Iowa Code sections 147.76 and 272C.3.

The following amendment is proposed.

Amend subrule **13.3(1)**, paragraph “c,” as follows:

c. “Written protocol” means a physician's order for one or more patients that contains, at a minimum, the following:

(1) A statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of adult immunizations for influenza and pneumococcus;

(2) A statement identifying the individual authorized ~~pharmacists~~ *pharmacist*;

(3) A statement that forbids an authorized pharmacist from delegating the administration of adult immunizations to anyone other than another authorized pharmacist, *a registered pharmacist-intern under the direct personal supervision of the authorized pharmacist*, or a registered nurse;

(4) A statement identifying the vaccines that may be administered by an authorized pharmacist, the dosages, and the route of administration;

(5) A statement identifying the activities an authorized pharmacist shall follow in the course of administering adult immunizations, including:

1. Procedures for determining if a patient is eligible to receive the vaccine;

## MEDICAL EXAMINERS BOARD[653](cont'd)

2. Procedures for determining the appropriate scheduling and frequency of drug administration in accordance with applicable guidelines;

3. Procedures for record keeping and long-term record storage including batch or identification numbers;

4. Procedures to follow in case of life-threatening reactions; and

5. Procedures for the pharmacist and patient to follow in case of reactions following administration;

(6) A statement that describes how the authorized pharmacist shall report the administration of adult immunizations, within 30 days, to the physician issuing the written protocols and to the patient's primary care physician if one has been designated by the patient. In case of serious complications, the authorized pharmacist shall notify the physicians within 24 hours and submit a VAERS report to the bureau of immunizations, Iowa department of public health. (VAERS is the Vaccine Advisory Event Reporting System.) A serious complication is one that requires further medical or therapeutic intervention to effectively protect the patient from further risk, morbidity, or mortality.

**ARC 3275B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training Examiners hereby gives Notice of Intended Action to amend Chapter 351, "Licensure of Athletic Trainers," and Chapter 354, "Fees," Iowa Administrative Code.

These proposed amendments adopt new rules for licensure renewal and criteria and fees for obtaining a duplicate or reissued license and wallet card. Licensees who regularly examine, attend, counsel or treat adults or children will be required to document at the time of renewal that they have completed the mandatory training on abuse identification and reporting.

Any interested person may make written comments on the proposed amendments no later than May 4, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on May 4, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152D and 272C.

The following amendments are proposed.

ITEM 1. Rescind rule 645—351.9(147) and adopt the following **new** rule in lieu thereof:

**645—351.9(147) License renewal.**

**351.9(1)** The biennial license renewal period for a license to practice athletic training shall begin on March 1 of each odd-numbered year and end on February 28 of the next odd-numbered year. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license. Failure to receive the renewal application shall not relieve the licensee of the obligation to pay the biennial renewal fee(s) on or before the renewal date.

**351.9(2)** An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

**351.9(3)** A licensee shall:

a. Meet the continuing education requirements of rule 645—352.2(152D) and the mandatory reporting requirements of subrule 351.9(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

**351.9(4)** Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 352.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

**351.9(5)** When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

**351.9(6)** A person licensed to practice as an athletic trainer shall keep the license certificate and wallet card displayed in a conspicuous public place at the primary site of practice.

**351.9(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 354.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 2. Renumber rules **645—351.11(272C)** and **645—351.12(17A,147,272C)** as **645—351.13(272C)** and **645—351.14(17A,147,272C)** and adopt the following new rules:

**645—351.11(147) Duplicate certificate or wallet card.**

**351.11(1)** A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

**351.11(2)** A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—354.1(147,152D).

**351.11(3)** If the board receives a completed application for a duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

**645—351.12(147) Reissued certificate or wallet card.** The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—354.1(147,152D).

ITEM 3. Amend subrule 354.1(5) as follows:

**354.1(5)** Duplicate or reissued license certificate fee is \$10.

ITEM 4. Renumber subrules **354.1(7)** and **354.1(8)** as **354.1(8)** and **354.1(9)** and adopt the following new subrule:

**354.1(7)** Duplicate or reissued wallet card fee is \$10.

## ARC 3294B

### PUBLIC SAFETY DEPARTMENT[661]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 100B.10, the Department of Public Safety hereby proposes to amend Chapter 54, “Fire Fighter Certification,” Iowa Administrative Code.

One of the programs of the Fire Service Training Bureau is the certification of fire fighters in the state of Iowa. There are several different levels of certification, each based upon standards promulgated by the National Fire Protection Association. While certification is voluntary under state law—that is, state law does not require certification in order to work either for pay or as a volunteer in the fire service—some fire departments within the state of Iowa require certification of their members as a condition of employment. The rules currently in Chapter 54 provide procedures for the operation of the certification program, standards for certification at various levels, and fees to be collected by the Fire Service Training Bureau related to the certification program. The proposed changes update standards for the various levels of certification offered by the Fire Service Training Bureau.

These amendments propose to renumber the rules regarding fire fighter certification and reserve rule numbers up to and including 54.200 in Chapter 54. This change is proposed in order to accommodate rules which are likely to be proposed within the next few months regarding minimum training standards for fire fighters. The proposed rules for minimum training standards are not ready to be proposed at this time, and changing the numbering of the fire fighter certification rules in this rule making will reduce possible confusion when the rules establishing minimum training standards are proposed. These amendments contain one change beyond the renumbering of rules for fire fighter certification. A definition of “National Fire Protection Association” is proposed to be added. It is to be placed at the beginning of the chapter, since it will eventually apply to all parts of the chapter when they are adopted.

A public hearing on these proposed amendments will be held on June 3, 2004, at 9:30 a.m. at the offices of the Fire Service Training Bureau, 3100 Fire Service Road, Ames, Iowa 50011-3100. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code chapter 100B.

The following amendments are proposed.

ITEM 1. Amend **661—Chapter 54**, title, as follows:

#### CHAPTER 54

#### FIRE FIGHTER TRAINING AND CERTIFICATION

ITEM 2. Renumber rules **661—54.1(100B)** to **661—54.4(100B)** as **661—54.201(100B)** to **661—54.204(100B)** under the new division heading “Fire Fighter Certification.”

ITEM 3. Adopt new rule 661—54.1(100B) as follows:



PUBLIC SAFETY DEPARTMENT[661](cont'd)

**661—54.1(100B) Definition.** The following definition applies to rules 661—54.201(100B) to 54.204(100B):

“NFPA” means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form “NFPA xx,” where “xx” is a number, refer to the NFPA standard or pamphlet of the corresponding number.

ITEM 4. Reserve rules **661—54.2** to **54.200**.

ITEM 5. Amend renumbered rule 661—54.201(100B), introductory paragraph, as follows:

**661—54.201(100B) Fire fighter certification program.** There is established within the fire service training bureau of the fire marshal division a fire fighter certification program for the state of Iowa, which shall be known as the Iowa fire service certification system. The Iowa fire service certification system is accredited by the International Fire Service Accreditation Congress to certify fire service personnel to accepted national standards. All certifications issued by the Iowa fire service certification system shall be based upon nationally accepted standards. Participation in the Iowa fire service certification system is voluntary in that state law does not require certification to work or volunteer as a fire fighter in Iowa. However, some fire departments within the state require certification for continued employment or promotion. *Inquiries regarding such requirements should be directed to the hiring or employing department.*

ITEM 6. Amend renumbered rule 661—54.202(100B) as follows:

**661—54.202(100B) Certification standards.** Standards for Iowa fire fighter certification are based upon nationally recognized standards established by the National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Certification at each level in the Iowa fire service certification system results in national certification as well.

**54.202(1) Fire fighter I.**

a. *Fire fighter I.* Certification as a fire fighter I is based upon the requirements for fire fighter I certification established in NFPA 1001, “Standard for Fire Fighter Professional Qualifications,” 1997 2002 edition, chapter 3 5, published by the National Fire Protection Association.

**54.202(2) b. Fire fighter II.** Certification as a fire fighter II is based upon the requirements for fire fighter II certification established in NFPA 1001, “Standard for Fire Fighter Professional Qualifications,” 1997 2002 edition, chapter 4 6, published by the National Fire Protection Association.

**54.202(3 2) Driver/operator (pumper).**

a. *Driver/operator (pumper).* Certification as a driver/operator (pumper) is based upon the requirements for fire department vehicle driver/operator (pumper) certification established in NFPA 1002, “Standard for Fire Vehicle Driver/Operator Professional Qualifications,” 1998 2002 edition, chapter 5 published by the National Fire Protection Association.

b. *Driver/operator (aerial).* Certification as a driver/operator (aerial) is based upon the requirements for fire department vehicle driver/operator (aerial) certification established in NFPA 1002, “Standard for Fire Vehicle Driver/Operator Professional Qualifications,” 2002 edition, chapter 6.

**54.202(4 3) Fire officer I.**

a. *Fire officer I.* Certification as a fire officer I is based upon the requirements for fire officer I certification established in NFPA 1021, “Standard for Fire Officer Professional

Qualifications,” 1997 2003 edition, chapter 4 published by the National Fire Protection Association.

b. *Fire officer II.* Certification as a fire officer II is based upon the requirements for fire officer II certification established in NFPA 1021, “Standard for Fire Officer Professional Qualifications,” 2003 edition, chapter 5.

**54.202(4) Fire inspector.** Certification as a fire inspector I is based upon the requirements for certification as a fire inspector I established in NFPA 1031, “Standard for Professional Qualifications for Fire Inspector and Plans Examiner,” 2003 edition, chapter 4.

**54.202(5) Fire investigator.** Certification as a fire investigator is based upon the requirements for certification as a fire investigator established in NFPA 1033, “Standard for Professional Qualifications for Fire Investigator,” 2003 edition, chapter 4.

**54.202(5) 54.202(6) Fire service instructor I.**

a. *Fire service instructor I.* Certification as a fire service instructor I is based upon the requirements for certification as a fire service instructor I established in NFPA 1041, “Standard for Fire Service Instructor Professional Qualifications,” 1996 2002 edition, chapter 2 4, published by the National Fire Protection Association.

b. *Fire service instructor II.* Certification as a fire service instructor II is based upon the requirements for certification as a fire service instructor II established in NFPA 1041, “Standard for Fire Service Instructor Professional Qualifications,” 2002 edition, chapter 5.

**54.202(7) Responder to hazardous materials incidents.**

a. *Responder to hazardous materials incidents (awareness).* Certification as a responder to hazardous materials incidents (awareness) is based upon the requirements for certification as a responder to hazardous materials incidents (awareness) established in NFPA 472, “Standard for Professional Competence of Responders to Hazardous Materials Incidents,” 2002 edition, chapter 4.

b. *Responder to hazardous materials incidents (operations).* Certification as a responder to hazardous materials incidents (operations) is based upon the requirements for certification as a responder to hazardous materials incidents (operations) established in NFPA 472, “Standard of Professional Competence of Responders to Hazardous Materials Incidents,” 2002 edition, chapter 5.

## ARC 3277B

## REAL ESTATE COMMISSION[193E]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 543B.9, 543B.18, and 543B.46, the Real Estate Commission hereby gives Notice of Intended Action to amend Chapter 13, “Trust Accounts and Closings,” Iowa Administrative Code.

The amendments to subrules 13.1(3), 13.1(7), and 13.1(11) were recommended by the Assistant Attorney General assigned to the Real Estate Commission, and are intended to clarify that written agreement of all parties and agreement of the broker are required before the broker can



## REAL ESTATE COMMISSION[193E](cont'd)

deposit trust funds into a real estate trust account bearing interest to a party other than the Iowa Department of Economic Development.

A public hearing will be held on May 4, 2004, at 10 a.m. in the Second Floor Professional Licensing Conference Room, 1920 SE Hulsizer, Ankeny, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Consideration will be given to all written suggestions or comments received before the end of the business day on May 4, 2004. Comments should be addressed to Roger Hansen, Executive Officer, Iowa Real Estate Commission, 1920 SE Hulsizer, Ankeny, Iowa 50021, or faxed to (515) 281-7411. E-mail may be sent to [Roger.Hansen@iowa.gov](mailto:Roger.Hansen@iowa.gov).

These amendments are intended to implement Iowa Code sections 543B.9, 543B.18 and 543B.46.

The following amendments are proposed.

ITEM 1. Amend subrule 13.1(3) as follows:

**13.1(3)** With *disclosure to and the written* agreement of all parties, a trust account may bear interest to be disbursed to (1) the buyer or seller involved in a real estate purchase, sale or exchange transaction, or (2) the property owner, if the property management or rental contract contains this specific provision, or (3) as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2), or (4) a third party if requested by the parties to the contract and agreed to by the broker. *Disbursements of interest on trust funds are subject to all provisions of law that require a broker to safeguard and account for the handling of funds of others.*

ITEM 2. Amend subrule 13.1(7) as follows:

**13.1(7)** Funds, *including interest on trust funds*, shall only be disbursed from the trust account as provided in *Iowa Code section 543B.46(1)* and by the terms and conditions of the contract or escrow agreement. No funds shall be disbursed from the trust account prior to the closing, or other than as provided by the terms of the escrow agreement, without the informed written consent of all the parties. In the event of a dispute over the return or forfeiture of an earnest money deposit or the disbursement of an escrow deposit held by a broker, the broker shall continue to hold the deposit in the trust account until one of the following conditions is met:

- a. The broker is in receipt of a written release from all parties to the transaction consenting to the disposition of the deposit or escrow funds; or
- b. The broker is in receipt of a final judgment of the court directing the disposition of the deposit or escrow funds; or
- c. There is a final decision of a binding alternative dispute resolution process, or mediation directing the disposition of the deposit or escrow funds; or
- d. A civil court action is filed by one or more of the parties to determine the disposition of the deposit or escrow funds, at which time the broker may seek court authorization to pay the deposit or escrow funds into court.

ITEM 3. Amend subrule 13.1(11) as follows:

**13.1(11)** A trust account may bear interest to be disbursed to the buyers or sellers or to a third party if requested by the parties to the contract and agreed to by the broker with the written approval of all parties to the contract or to the owner if the trust account is for a property management account and the management contract so specifies, or as otherwise specifically allowed or provided in Iowa Code sections 562A.12(2) and 562B.13(2). The account shall be a separate account

from the account(s) which is to accrue interest to the state. The broker shall not benefit from interest received on funds of others in the broker's possession. Interest shall be disbursed to the owner or owners of the funds at the time of settlement of the transaction or as agreed to in the management contract and shall be properly accounted for on closing statements. *A broker shall not disburse interest on trust funds except as provided in 13.1(3) and 13.1(7).* Service charges for the account are a business expense of the broker and shall not be deducted from the proceeds.

**ARC 3287B****WORKERS' COMPENSATION  
DIVISION[876]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 11, "Electronic Data Interchange (EDI)," Iowa Administrative Code.

This rule making modifies the existing rule on the requirements for filing required reports for work-related injuries with the agency.

The Division has determined that these proposed amendments will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies which contract with political subdivisions to provide services. Therefore, no fiscal impact statement accompanies this Notice.

The Division has determined that these proposed amendments will not necessitate additional annual expenditures exceeding \$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency. Therefore, no fiscal impact statement accompanies this Notice.

The Division has determined that these amendments will not have an impact on small business within the meaning of Iowa Code section 17A.4A.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 4, 2004, to the Workers' Compensation Commissioner, Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319.

This proposed rule making does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

These amendments are intended to implement Iowa Code sections 85.26, 86.8, 86.11, 86.12, and 86.13.

The following amendments are proposed.

ITEM 1. Amend rule 876—11.7(85,86) as follows:

**876—11.7(85,86) Required reports.** A reporter shall file reports as required by *Iowa Code sections 86.11, 86.12, and 86.13, 876—subrules 3.1(1) and 3.1(2)*, this chapter and the partnering agreement. Reports required to be filed include, but are not limited to, the following:

## WORKERS' COMPENSATION DIVISION[876](cont'd)

First report of injury (FROI). See 876—subrule 3.1(1);  
Subsequent report of injury (SROI). See 876—subrule 3.1(2); and

~~Annual reports report on open files every claim that cover all benefits paid during the previous year ending is open on June 30 each year. The annual report shall show all benefits paid since the claim was initiated through June 30 of the current year. A final report shall be filed in lieu of the annual report if the claim is closed and the final report is filed before the date when the annual report is scheduled to be filed; and~~

*Final report filed at the time the claim is closed. The final report indicates that no further benefit payments are contemplated.*

ITEM 2. Amend **876—Chapter 11**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 85.26, 86.8, 86.11, 86.12 and 86.13.

## ARC 3291B

PUBLIC SAFETY  
DEPARTMENT[661]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 100.35 and 135C.9, the Department of Public Safety hereby amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

Residential care facilities are health care facilities which provide limited care to their residents and specifically do not provide nursing care other than in emergencies. These facilities are licensed by the Iowa Department of Inspections and Appeals pursuant to Iowa Code section 135C.6. Iowa Code section 135C.9 provides that certification, based upon an inspection, by the Fire Marshal that the facility is in substantial compliance with rules adopted by the Fire Marshal that establish fire safety requirements for these facilities is a prerequisite to licensure by the Iowa Department of Inspections and Appeals.

Prior to March 11, 2003, rules 661—5.550(100) through 5.552(100) established the fire safety requirements for residential care facilities. When emergency rule making was undertaken in 2003 to update fire safety requirements generally for licensed health care facilities in Iowa, rules 661—5.550(100) through 5.552(100) were mistakenly rescinded and not replaced. Consequently, since March 11, 2003, there have been no Fire Marshal rules in effect establishing fire safety standards for residential care facilities. This rule corrects that situation.

Iowa Code section 100.1, subsection 5, requires that rules adopted by the Fire Marshal be in substantial compliance with fire safety standards published by the National Fire Protection Association. Iowa Code section 135C.9, subsection 2, requires that the fire safety standards established for health care facilities be "substantially in keeping with the latest generally recognized safety criteria for the facilities covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima facie evidence." This amendment adopts by reference applicable portions of the latest edition of the Life Safety Code, which is a standard published by the National Fire Protection Association. In addition, residential care facilities which have been in continuous operation since prior to March 11, 2003, and which were approved by the Fire Marshal pursuant to rules 661—5.550(100) through 5.552(100) prior to that date would be allowed to continue to operate in compliance with those rules.

This amendment was proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on February 18, 2004, as **ARC 3173B**. A public hearing was held on March 10, 2004. No comments were received regarding the amendment either at the public hearing or otherwise. The amendment adopted here is similar to the one proposed in the Notice of Intended Action, with only minor editorial corrections and the insertion of effective dates.

This amendment is being Adopted and Filed Emergency After Notice, after the public notice and participation provisions of Iowa Code chapter 17A were met, in order that the rule take effect at the earliest possible time, since there are currently no Fire Marshal rules in place for residential care facilities. Emergency rule making without completing the public notice and participation provisions of the Iowa Administrative Procedure Act was precluded by language found in Iowa Code section 100.1, subsection 5, which states that

"[Fire Marshal] rules shall be promulgated only after public hearing."

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective April 1, 2004, after filing with the Administrative Rules Coordinator. This amendment confers a benefit upon the public by instituting requirements for fire safety protections in residential care facilities, increasing the safety of residents and staff and reducing possible confusion about the requirements for operation of a facility.

This amendment became effective on April 1, 2004.

This amendment is intended to implement Iowa Code sections 100.35 and 135C.9.

The following amendment is adopted.

Amend rule 661—Chapter 5 by adopting the following **new** rule:

**661—5.950(135C) Residential care facilities.**

**5.950(1) Definitions.** The following definitions apply to rule 661—5.950(135C):

"Existing residential care facility" means a residential care facility which has been in continuous operation since before April 1, 2004.

"New residential care facility" means a residential care facility which begins operation on or after April 1, 2004.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

"Residential care facility" means a facility that is licensed or seeking licensure by the department of inspections and appeals as a residential care facility pursuant to the provisions of Iowa Code section 135C.6, or has been identified by the department of inspections and appeals as a facility that requires licensure as a residential care facility pursuant to Iowa Code section 135C.6.

**5.950(2) New residential care facilities.** NFPA 101, Life Safety Code, 2003 edition, Chapter 18, "New Health Care Facilities," is adopted by reference as the rules governing new residential care facilities. For purposes of this subrule, a residential care facility is a "limited care facility" as defined in NFPA 101, Life Safety Code, 2003 edition, Section 3.3.69.2.

**5.950(3) Existing residential care facilities.** NFPA 101, Life Safety Code, 2003 edition, Chapter 19, "Existing Health Care Facilities," is adopted by reference as the rules governing existing residential care facilities. For purposes of this subrule, a residential care facility is a "limited care facility" as defined in NFPA 101, Life Safety Code, 2003 edition, Section 3.3.69.2.

**EXCEPTION:** Existing residential care facilities which were approved by the fire marshal on or before March 11, 2003, pursuant to rules 661—5.550(100) to 5.552(100) and which have been in continuous operation since on or before March 11, 2003, may continue to operate in compliance with rules 661—5.550(100) to 5.552(100) as those rules existed on March 10, 2003. **NOTE:** Rules 661—5.550(100) to 5.552(100) were rescinded effective March 11, 2003.

This rule is intended to implement Iowa Code sections 100.35 and 135C.9.

[Filed Emergency After Notice 3/25/04, effective 4/1/04]

[Published 4/14/04]

**EDITOR'S NOTE:** For replacement pages for IAC, see IAC Supplement 4/14/04.

**ARC 3278B****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.1, the Department of Agriculture and Land Stewardship hereby adopts amendments to Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The purpose of these amendments is to update animal exhibition requirements in Iowa to be used at county fairs, 4-H fairs or exhibitions, or similar exhibitions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3121B**. No comments were received. These amendments are identical to the Notice of Intended Action.

No waiver provision is included in these amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to the rules amended in this filing.

These amendments are intended to implement Iowa Code chapter 163.

These amendments shall become effective on May 19, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [64.34(2), 64.34(4), 64.34(10), 64.35(1), 64.35(2), 64.35(6)] is being omitted. These amendments are identical to those published under Notice as **ARC 3121B**, IAB 2/4/04.

[Filed 3/17/04, effective 5/19/04]  
[Published 4/14/04]

[For replacement pages for IAC, see IAC Supplement 4/14/04.]

**ARC 3285B****ECONOMIC DEVELOPMENT, IOWA  
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development amends Chapter 23, "Iowa Community Development Block Grant Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3151B** on February 4, 2004. The IDED Board adopted the amendments on March 18, 2004.

The amendments include listing of application review criteria and elimination of the preapplication process.

A public hearing was held on February 24, 2004. No comments were received at the public hearing or by the close of the comment period. One written comment was submitted after the comment period by a legislator who suggested that communities with a population of 300 or less should not be required to submit a preliminary engineering report with an application.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

These amendments will become effective on May 19, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [23.6(2)"c," 23.6(3), 23.6(4)] is being omitted. These amendments are identical to those published under Notice as **ARC 3151B**, IAB 2/4/04.

[Filed 3/19/04, effective 5/19/04]  
[Published 4/14/04]

[For replacement pages for IAC, see IAC Supplement 4/14/04.]

**ARC 3284B****ECONOMIC DEVELOPMENT, IOWA  
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 69, "Loan and Credit Guarantee Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3034B** on December 24, 2003. The IDED Board adopted the amendments on March 18, 2004.

The new rules implement the Loan and Credit Guarantee Program as authorized by Iowa Code Supplement sections 15E.221 to 15E.227 and 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 69. The rules establish application procedures and evaluation criteria, form of award, and the contractual and compliance components of the Program.

A public hearing to receive comments about the proposed new chapter was held on January 16, 2004. The following comments were received:

1. The ability of the Department to cancel a guarantee should be limited to instances of "fraud or gross malfeasance."

2. The term of the guarantee should be limited to the lesser of 15 years or the useful life of the assets being financed.

3. The rules should outline the application contents and process to be used.

4. The rules should clarify the maximum amount of guarantees that a financial institution may receive for any single qualified business or targeted industry business.

5. The rules should confirm whether or not a change in terms of credit is a "substantive change" under subrule 69.7(3).

Based on these comments, the following changes were made to the rules:

1. Language was added to the introductory paragraph of rule 261—69.5(15E) to clarify the maximum amount of guarantees a single qualified business or targeted industry business may receive.

2. Language was added to paragraph 69.7(1)"c" to allow the Department, at its discretion, to cancel or reduce a loan or

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

credit guarantee if the financial institution demonstrates instances of fraud or gross malfeasance under the loan and credit guarantee agreement.

3. Language was added to subrule 69.7(3) to include changes in terms of credit as a substantive change that will require a request for amendment.

In addition, minor grammatical changes and clarifications have been made to the rules.

These rules are intended to implement Iowa Code Supplement sections 15E.221 to 15E.227 and 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 69.

These rules will become effective on May 19, 2004.

The following new chapter is adopted.

## CHAPTER 69

## LOAN AND CREDIT GUARANTEE PROGRAM

**261—69.1(15E) Purpose.** The purpose of the loan and credit guarantee program is to create incentives and assistance to increase the flow of private capital to targeted industry businesses and other qualified businesses, to promote industrial modernization and technology adoption, to encourage the retention and creation of jobs, and to encourage the export of goods and services sold by Iowa businesses in national and international markets.

**261—69.2(15E) Definitions.**

“Act” means Iowa Code Supplement sections 15E.221 to 15E.227.

“Department” or “IDED” means the Iowa department of economic development.

“Financial institution” means a state bank as defined in Iowa Code section 524.103, subsection 33, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under Iowa Code chapter 534, or a production credit association or such other financial institution as defined by the department for purposes of this chapter.

“Program” means the loan and credit guarantee program established in the Act.

“Qualified business” means an existing or proposed business entity with an annual average number of employees not exceeding 200 employees. “Qualified business” does not include businesses engaged primarily in retail sales, real estate, or the provision of health care or other professional services. “Qualified business” includes professional services businesses that provide services to targeted industry businesses or other entities. To be considered a qualified business, a professional services business must derive a majority of its revenue from targeted industry businesses.

“Targeted industry business” means an existing or proposed business entity, including an emerging small business or qualified business which is operated for profit and which has a primary business purpose of doing business in at least one of the targeted industries designated by the department, which include life sciences, software and information technology, advanced manufacturing, value-added agriculture, and any other industry designated as a targeted industry by the loan and credit guarantee advisory board.

**261—69.3(15E) Application and review process.** The department, with the advice of the loan and credit guarantee board, shall develop and make available a standardized ap-

plication pertaining to the issuance of loan and credit guarantees. Subject to the availability of funds, the loan and credit guarantee board will review applications and make recommendations to the department pertaining to the approval of loan and credit guarantee awards. The director of the department shall have final approval of loan and credit guarantee awards.

**69.3(1)** Each participating financial institution shall identify and underwrite potential lending opportunities with qualified businesses and targeted industry businesses. Upon determination by the financial institution that the business meets the financial institution’s underwriting criteria, subject to the approval of a loan and credit guarantee, the financial institution shall submit a loan and credit guarantee application and the underwriting information to the department.

**69.3(2)** It shall be the responsibility of the financial institution and the qualified business or targeted industry business to submit a complete application. The department, with the advice of the loan and credit guarantee board, shall determine when an application is complete. Once the department has determined that an application is complete, the department shall consider the application as expeditiously as possible.

**69.3(3)** The department, with the advice of the loan and credit guarantee board, may develop an application procedure to allow a qualified business or targeted industry business to apply directly to the department for a preliminary guarantee determination. A preliminary guarantee determination may be issued by the department subject to the qualified business’s or targeted industry business’s securing a commitment for financing from a financial institution.

**261—69.4(15E) Application approval or rejection.** Upon approval of an application, the department shall issue a loan and credit guarantee agreement with a financial institution outlining the terms and conditions upon which the loan will be guaranteed.

**69.4(1)** No guarantee shall become effective until the required fees have been paid. Such payment, along with an executed loan authorization, shall indicate the financial institution’s acceptance of the terms of the loan authorization.

**69.4(2)** In the event the department rejects an application, the financial institution and the borrower will be sent notice, including reasons for the rejection.

**261—69.5(15E) Terms and conditions.** A loan and credit guarantee provided to a financial institution for a qualified business or targeted industry business shall not exceed \$1 million. Loan and credit guarantees provided under the program to more than one financial institution for a single qualified business or targeted industry business shall not exceed \$10 million. A single qualified business or targeted industry business may have multiple guarantees with multiple financial institutions. The aggregate amount of loan or credit guarantees provided to financial institutions for any single qualified business or targeted industry business shall not exceed \$10 million.

**69.5(1)** A loan and credit guarantee provided under the program shall be for eligible project costs. Eligible project costs include expenditures for production equipment and machinery, land and real estate, working capital for operations and export transactions, research and development, marketing, engineering and architectural fees, and such other costs as the department may designate.

**69.5(2)** The loan and credit guarantee provided under the program shall be negotiated on a case-by-case basis and in no case shall exceed more than 50 percent of the amount to be

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

loaned to the qualified business or targeted industry business by the financial institution for the project as described in the loan and credit guarantee application.

**69.5(3)** Interest rate and term of the loan to be secured shall be agreed upon between the financial institution and the borrower, provided that no guarantee exceeds 15 years.

**69.5(4)** Repayment of a guaranteed loan shall be secured by such collateral as the department deems prudent.

**69.5(5)** The covenants and requirements of the loan shall be established by the financial institution and department in accordance with prudent lending practices.

**261—69.6(15E) Administrative costs and program fees.** The department, with the advice of the loan and credit guarantee board, may establish fees for participation in the loan and credit guarantee program.

**69.6(1)** The department shall charge a nonrefundable application fee for a loan and credit guarantee. The department shall set the application fee annually and include the fee information in the application materials for the loan and credit guarantee program. This fee will be payable upon submission of an application for a loan and credit guarantee from a financial institution or a qualified business or targeted industry business and shall not exceed \$1,000.

**69.6(2)** Upon the approval of a loan and credit guarantee application, the department shall charge a fee for authorization of the loan or credit guarantee. The fee shall be 2.5 percent of the amount of funds to be guaranteed under the program. No loan and credit guarantee agreement will be executed until the fee is received by the department.

**261—69.7(15E) Administration of guarantees.** A preliminary commitment issued by the department shall be effective for 90 days from the date of issuance. If the contingencies outlined in the preliminary commitment are not met within 90 days, the preliminary commitment will be void.

**69.7(1)** A loan and credit guarantee agreement shall be executed between a financial institution, the borrower and the department. These rules and applicable state laws and regulations shall be part of the agreement. The loan and credit guarantee agreement shall include, but is not limited to, the following:

a. Provisions setting forth the responsibilities of the financial institution to prudently underwrite and service insured loans in such a manner as would be the normal and customary practice of a prudent lender making or servicing a loan.

b. A requirement that the financial institution notify the department in writing within 5 business days after a borrower's payment is 30 days late and within 15 business days of any other default or event or condition which indicates the loan may be difficult to collect in full. Upon default of the loan, the financial institution, in consultation with the department, shall take such action as may be prudent, including foreclosing on and liquidating collateral.

c. The department may, at its discretion, cancel or reduce a loan or credit guarantee if the financial institution demonstrates instances of fraud or gross malfeasance under the loan and credit guarantee agreement.

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the project or upon other matters as determined appropriate by the department.

**69.7(2)** The financial institution and borrower must execute and return the loan and credit guarantee agreement to the department within the time period specified by the department in the agreement. Failure to do so may be cause for the department to terminate the loan and credit guarantee.

**69.7(3)** Any substantive change to a loan and credit guarantee agreement, such as time extensions, budget revisions and significant alteration of the funded project that change the scope, location, objectives or scale of the approved project or changes in terms of credit, shall be considered a request for an amendment. Amendments must be requested in writing by the financial institution and are not considered valid until approved by the department and confirmed in writing by IDED following the procedure specified in the contract between the recipient and IDED.

**69.7(4)** Financial institutions shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

These rules are intended to implement Iowa Code Supplement sections 15E.221 to 15E.227 and 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 69.

[Filed 3/19/04, effective 5/19/04]

[Published 4/14/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/14/04.

## ARC 3300B

### ELDER AFFAIRS DEPARTMENT[321]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby amends Chapter 1, "Introduction"; rescinds Chapter 3, "Commission Established," and adopts a new Chapter 3, "Commission of Elder Affairs"; adopts a new Chapter 11, "Waivers or Variances from Administrative Rules"; rescinds Chapter 16, "Senior Living Coordinating Unit," and adopts a new Chapter 16 with the same title; and amends Chapter 17, "Petition for Rule Making," and Chapter 18, "Declaratory Rulings," Iowa Administrative Code.

These amendments eliminate obsolete language and update language to reflect current policy and procedures. Language regarding waivers in Chapter 1 is rescinded and a new Chapter 11 is established for waivers or variances from administrative rules. Chapter 3 is rescinded and a new chapter with updated language is established. New Chapter 16 establishes definitions related to the Senior Living Coordinating Unit and also establishes the Director of the Department of Elder Affairs as the chairperson for the coordinating unit. Amendments to Chapters 17 and 18 revise the mailing address for the Department and update the methods for submitting materials to the Department.

Notice of Intended Action was published February 4, 2004, in the Iowa Administrative Bulletin as **ARC 3145B**. A public hearing was held over the Iowa Communications Network (ICN) on February 25, 2004. Comments were received at the public hearing and in writing. Only one comment was received regarding a clarification of the role of the Community-Based Adult Services Committee. No changes were made in any of the chapters that were published under Notice as **ARC 3145B**.

The Commission adopted the amendments during the Commission meeting held on March 23, 2004.

These amendments will become effective May 19, 2004.

## ELDER AFFAIRS DEPARTMENT[321](cont'd)

These amendments are intended to implement Iowa Code chapters 17A, 21, and 231 and Executive Order Number 11.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.2(1)“f,” 1.2(3), Chs 3, 11, 16 to 18] is being omitted. These amendments are identical to those published under Notice as **ARC 3145B**, IAB 2/4/04.

[Filed 3/26/04, effective 5/19/04]  
[Published 4/14/04]

[For replacement pages for IAC, see IAC Supplement 4/14/04.]

**ARC 3288B****ELDER AFFAIRS  
DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby rescinds Chapter 22, “Elder Family Homes (EFH),” Chapter 23, “Representative Payee Program (RPP) and Bill Payer Program (BPP),” and Chapter 24, “Adult Day Care and Facility-Based Respite Care,” and adopts new Chapter 24, “Adult Day Services Programs,” Iowa Administrative Code.

Chapter 24 establishes requirements for program certification and standards for adult day services programs.

These rules will be subject to waiver at the discretion of the Department in accordance with 321—Chapter 11, “Waivers or Variances from Administrative Rules” (published herein as **ARC 3300B**), except for specific waiver provisions stated in 321—24.26(231D).

Notice of Intended Action was published December 10, 2003, in the Iowa Administrative Bulletin as **ARC 3002B**. A public hearing was held over the Iowa Communications Network (ICN) on January 7, 2004. Comments were received at the public hearing and in writing. The comments received resulted in the following changes:

1. Definitions of “accredited” and “nonaccredited” were added to rule 321—24.1(231D).
2. In addition, the definition of “program” was changed to reflect the varied usage of the word throughout this chapter.
3. The definition of “qualified professional” was revised.
4. In the definition of “contractual agreement,” the phrase “legally binding” was omitted.
5. A sentence which states that certification is equivalent to licensure was added to rule 321—24.2(231D).
6. Subrule 24.24(2), which pertains to language requirements for the contractual agreement, was revised.
7. In subrule 24.24(5), paragraphs “e” and “f,” the word “guarantee” was replaced with the word “statement.” The substance of paragraphs “g” to “k” and “m” and “n” was moved from 24.24(5) to 24.24(6). The substance of paragraph “l” was not adopted.
8. Paragraph “o” of 24.24(5) was revised and relettered as “g,” and a new paragraph “h” was added.
9. The following sentence was added in subrule 24.24(10): “The basic marketing material shall include a

statement that the contractual agreement is available to all persons upon request.”

10. The catchwords “assistance with transfer” were moved from 24.25(6) to 24.25(5), and the catchwords “appeal of an involuntary transfer” were added to subrule 24.25(6).

11. The word “retention” was replaced with the word “transfer” in subrule 24.25(5).

12. The words “service plan” were deleted and replaced with the word “participant” in the catchwords of rule 321—24.28(231D).

13. In subrule 24.29(3), the term “health professional” replaced the term “human service professional” in the list of required members of the multidisciplinary team. The phrase “either a health care professional or an allied health professional, as appropriate” was deleted and replaced with the phrase “and other staff as appropriate to meet the needs of the participant in consultation with the participant and, at the participant’s request, with other individuals identified by the participant, and, if applicable, with the participant’s legal representative.”

14. Paragraph 24.30(1)“d” was added. Paragraph “d” reads as follows:

“d. When partial or complete control of medication is delegated to the program by the participant, appropriate staff may transfer medication from the original prescription containers into medication reminder boxes or medication cups in the participant’s presence.”

15. Paragraph 24.30(2)“c” was not adopted, and subsequent paragraphs were relettered accordingly.

16. In subrule 24.31(1), the words “health status” were substituted for the word “condition.”

17. Subrule 24.33(3) was rewritten to clarify nutritional requirements for meals served per day.

18. In subrule 24.33(4), the phrase “health care professional” was replaced with the phrase “physician, physician assistant, or advanced registered nurse practitioner.”

19. In subrule 24.38(3), the reference to a specific chapter of the fire marshal’s rules was deleted and replaced with the words “in administrative rules promulgated by the state fire marshal.” A sentence regarding approval by the state fire marshal was added.

20. Subrule 24.41(10) was revised to include references to applicable local and state building codes.

21. Rule 321—24.42(231D) relating to quality improvement was not adopted, and rule 321—24.43(231D) was renumbered as 321—24.42(231D).

22. Various numbering and grammatical changes were made as needed.

The Commission adopted these amendments during its regularly scheduled meeting on March 23, 2004.

These amendments will become effective on May 19, 2004.

These amendments are intended to implement Iowa Code Supplement chapter 231D.

The following amendments are adopted.

ITEM 1. Rescind and reserve **321—Chapters 22 and 23**.

ITEM 2. Rescind 321—Chapter 24 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 24****ADULT DAY SERVICES PROGRAMS****321—24.1(231D) Definitions.**

## ELDER AFFAIRS DEPARTMENT[321](cont'd)

"Accredited" means that the program has received accreditation from the entity named in subrule 24.14(1).

"Adult" means a person 18 years of age or older.

"Adult day services," "adult day services program" or "program" means an organized program providing a variety of health, social, and related support services for 16 hours or less in a 24-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

"Adult with functional impairments" means an adult who has a psychological, cognitive or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

"Allied health care professional" means a person licensed through the Iowa department of public health, other than a physician, physician assistant, registered nurse or advanced registered nurse practitioner, who provides health services to the participant.

"Assistance" means aid to a participant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the participant regarding a particular task or activity shall not be construed to mean the participant has not participated in the task or activity.

"CARF" means the Rehabilitation Accreditation Commission.

"Cognitive disorder" means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

"Contractual agreement" means written agreement between the program and the participant or legal representative.

"Dementia" means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

"Dementia-specific adult day services program" means a program certified under this chapter that either serves five or more participants with dementia between stages four and seven on the Global Deterioration Scale or holds itself out as providing specialized care for persons with a cognitive disorder or dementia, such as Alzheimer's disease, in a dedicated setting.

"Department" means the department of elder affairs.

"DIA" means the department of inspections and appeals.

"Functional impairment" means a psychological, cognitive, or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

"Global Deterioration Scale" means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

"Health care" means services provided by a health care professional, allied health care professional or supervised designated health care giver on a part-time or intermittent basis.

"Health care professional" means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

"Human service professional" means an individual with at least a bachelor's degree in a human service field including human services, gerontology, social work, sociology,

psychology, and family science. Experience in a human service field may be substituted for up to two years of required education.

"In the proximate area" means located within a less-than-five-minute response time.

"Legal representative" means a person appointed by the court to act on behalf of the participant, or a person acting pursuant to a power of attorney.

"Modification" means any addition to or change in dimensions or structure except as incidental to the customary maintenance of the program structure.

"Nonaccredited" means that the program has been certified under the provisions of this chapter but has not received accreditation from the entity named in subrule 24.14(1).

"Nurse-delegated assistance" means those delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

"Participant" means an adult with a functional impairment who meets eligibility requirements for the program and who has a contractual agreement with the program.

"Part-time or intermittent health-related care" means licensed nursing services and professional therapies, in combination with nurse-delegated assistance, which are provided to a participant not to exceed a total of three hours per day.

"Program" shall have one of the following meanings, determined by the context of the particular rule under consideration:

1. A person. Unless otherwise provided by law, "person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

2. A physical facility, structure or building utilized in an adult day services program.

3. Adult day services provided to persons eligible for an adult day program as defined in this chapter.

"Qualified professional" means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling or electrical contractor who furnishes regular service to such equipment.

"Recognized accrediting entity" means a nationally recognized accrediting entity that the department recognizes as having specific adult day services program standards equivalent to the standards established by the department.

"Remodeling" means modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

"Routine" means regular, customary or not occasional or intermittent.

"Self-administration" means a participant's taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

"Service plan" means the document that defines the services to meet the needs and preferences of a participant.

"Supervision of self-administration" means a staff person's activities such as routine prompting and reminding, opening of containers or packaging at the direction of the participant, or reading instructions or other label information in order for a participant to self-administer a medication.

"Unmanageable incontinence" means a condition that requires staff provision of total care for an incontinent participant who lacks the ability to assist in bladder or bowel continence care.



## ELDER AFFAIRS DEPARTMENT[321](cont'd)

“Visiting day(s)” means up to 16 hours in a two-day period during which a person may visit a program prior to admission for the purpose of assessing program eligibility and personal satisfaction. A written explanation of the expectations for the visiting day shall be provided.

**321—24.2(231D) Program certification.** New programs and existing accredited programs shall be certified and operated in accordance with Iowa Code Supplement chapter 231D and all applicable administrative rules. Programs not accredited by a recognized accrediting entity shall become certified by meeting all of the requirements set forth in 24.3(231D) and all requirements imposed by Iowa Code Supplement chapter 231D and this chapter. For the purpose of these rules, certification is equivalent to licensure. A current certificate shall be visibly displayed within the designated area of the operation of the program.

**321—24.3(231D) Certification of a nonaccredited program.**

**24.3(1)** The applicant shall complete an approved application packet obtained from the department of inspections and appeals (DIA). Application materials may be obtained on the health facilities division Web site at [www.dia-hfd.state.ia.us](http://www.dia-hfd.state.ia.us); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**24.3(2)** The applicant shall submit one copy of the completed application and all supporting documentation to DIA at the above address. The time frame for submission of the application shall be as follows:

- a. For a new operation, at least 60 calendar days prior to the expected date of beginning operation;
- b. For a program in operation on or before May 19, 2004, within 30 calendar days following compliance with structural and life safety requirements pursuant to 24.19(231D) and 24.41(231D).

**24.3(3)** The appropriate fees, as stated in 321—Chapter 27, shall accompany each application and are payable by check or money order to the Department of Inspections and Appeals. The fees are nonrefundable.

**24.3(4)** No application shall be considered by DIA until it is received with all supporting documents and fees.

**321—24.4(231D) Nonaccredited program application content.** An application for certification or recertification of a nonaccredited program shall include the following:

**24.4(1)** A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the changes.

**24.4(2)** A statement affirming that the individuals listed in 24.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**24.4(3)** A statement disclosing whether any of the individuals listed in 24.4(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code Supplement section 135C.1 or a licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification

or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

**24.4(4)** A copy of the current policy and procedure for evaluation of each participant, which includes a copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each participant.

**24.4(5)** Identification of target population.

**24.4(6)** A copy of the current service plan format.

**24.4(7)** If the program contracts for personal care or health-related care services from a certified home health agency, mental health center or a licensed health care facility, a copy of that entity's current license or certification.

**24.4(8)** A copy of the current policy and procedure for addressing medication needs of participants.

**24.4(9)** A copy of the current policy and procedure describing accident and emergency response procedures.

**24.4(10)** A copy of the current participant contractual agreement.

**24.4(11)** A copy of the current policy and procedure for managing risk and upholding participant autonomy when participant decision making may result in poor outcomes for the participant or others.

**24.4(12)** A copy of the current state license(s) for the entity providing food service, whether it is the program or an outside entity or a combination of both.

**24.4(13)** A copy of the written policies and procedures for food service that includes staffing, nutrition, menu planning, therapeutic diets, preparation, service and storage.

**321—24.5(231D) Initial certification process for nonaccredited program.**

**24.5(1)** DIA shall determine whether or not the proposed adult day services program meets applicable requirements contained in Iowa Code Supplement chapter 231D and this chapter upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval.

**24.5(2)** DIA shall notify the applicant within five working days of any preliminary determination.

a. If the determination is to certify, DIA shall issue a conditional certification not to exceed one year.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

**24.5(3)** The conditional certification shall allow the applicant to begin operation and accept participants into the program.

**24.5(4)** Within 90 calendar days following issuance of conditional certification, DIA shall conduct an on-site monitoring evaluation to determine compliance with the provisions of Iowa Code Supplement chapter 231D and this chapter.

**24.5(5)** If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within ten working days following receipt of the report.

**24.5(6)** DIA shall make a final certification decision based on the results of the monitoring evaluation and review of an acceptable plan of correction.

**24.5(7)** DIA shall notify the program of a final certification decision within 10 working days following the finalization of the on-site monitoring evaluation report or receipt of an acceptable plan of correction, whichever is applicable.

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**24.5(8)** If the decision is to continue certification, DIA shall issue a full two-year certification effective from the date of the original conditional certification.

**24.5(9)** If the decision is to discontinue certification through denial, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,231D).

**321—24.6(231D) Recertification of nonaccredited program.**

**24.6(1)** Certification of a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

**24.6(2)** DIA shall send recertification application materials to each program at least 120 calendar days prior to expiration of its certification.

**321—24.7(231D) Recertification process for nonaccredited program.** To obtain recertification, a program shall:

**24.7(1)** Submit one copy of the completed application, associated documentation and the recertification fee as listed in 321—Chapter 27 to DIA at the address stated in 24.3(1) at least 90 calendar days prior to the expiration of the program's certification.

**24.7(2)** Submit additional documentation that the following systems have been inspected by a qualified professional and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking area, laundry, and elevators.

**321—24.8(231D) Notification of recertification.**

**24.8(1)** DIA shall review the application and associated documentation and fees for completion and notify the program of application status within 10 working days of receipt of the required application materials.

**24.8(2)** DIA shall conduct an on-site monitoring evaluation of the program between 60 and 90 days prior to expiration of the program's certification.

**24.8(3)** If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. Within 10 working days of receiving all documentation, including state fire marshal approval and an acceptable plan of correction, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231D and this chapter and make a recertification decision.

**24.8(4)** If no regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings with the final recertification decision. Within 15 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231D and this chapter and make a recertification decision.

**24.8(5)** If the decision is to recertify, DIA shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

**24.8(6)** If the decision is to deny recertification, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,231D).

**24.8(7)** If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

**321—24.9(231D) Certification and recertification process for an accredited program.**

**24.9(1)** An applicant program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from DIA. Application materials may be obtained from the health facilities division Web site at [www.dia-hfd.state.ia.us](http://www.dia-hfd.state.ia.us); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

b. Submit a copy of the current accreditation outcome from a recognized accrediting entity.

c. Apply for certification within 30 calendar days following compliance with life safety requirements pursuant to this chapter for a program in operation on or before May 19, 2004.

d. Apply for recertification within 60 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

e. Maintain compliance with life safety requirements pursuant to this chapter.

**24.9(2)** DIA shall not consider an application until it is completed and received with all supporting documentation.

**321—24.10(231D) Accredited program certification or recertification application content.** An application for certification or recertification of a program shall include the following:

**24.10(1)** A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change.

**24.10(2)** A statement affirming that the individuals listed in 24.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**24.10(3)** A statement disclosing whether any of the individuals listed in 24.10(1) have or have had an ownership interest in a program, assisted living program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code Supplement section 135C.1 or licensed hospital under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

**24.10(4)** Identification of target population.

**24.10(5)** A copy of the current accreditation outcome from the recognized accrediting entity.

**321—24.11(231D) Initial certification process for accredited program.**

**24.11(1)** DIA shall determine whether or not the accredited program meets applicable requirements contained in these rules and Iowa Code Supplement chapter 231D within 20 working days of receiving all finalized documentation, including state fire marshal approval.

**24.11(2)** DIA shall notify the accredited program within 10 working days of the final certification decision.

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a. If the decision is to certify, a full certification shall be issued for the term of the accreditation, not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

c. Certification for a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

### **321—24.12(231D) Recertification for accredited program.**

**24.12(1)** DIA shall send recertification application materials to each program at least 90 calendar days prior to expiration of its certification.

**24.12(2)** To obtain recertification, an accredited program shall submit one copy of the completed application and associated documentation to DIA at the address stated in 24.9(1) at least 60 calendar days prior to the expiration of the program's certification.

**24.12(3)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in these rules and make a recertification decision.

**24.12(4)** DIA shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification will be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked either by DIA or the recognized accrediting entity.

b. If the determination is to deny recertification of the program, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

**24.12(5)** If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

### **321—24.13(231D) Duration of certification for all programs.**

**24.13(1)** Certification as a nonaccredited program by DIA will be applicable for two years, unless conditionally issued, suspended or revoked.

**24.13(2)** Certification as an accredited program by DIA will be applicable for the term of the accreditation, not to exceed three years, unless conditionally issued, suspended or revoked either by DIA or the recognized accrediting entity. DIA shall maintain a list of all certified programs. The list shall be readily available from DIA upon request.

### **321—24.14(231D) Recognized accrediting entity.**

**24.14(1)** The department designates CARF as a recognized accrediting entity for programs.

**24.14(2)** To apply for designation by the department as a recognized accrediting entity for programs, an accrediting organization shall submit a letter of request and meet the requirements found in this rule.

**24.14(3)** The designation shall remain in effect for as long as the accreditation standards continue to meet the minimum requirements of Iowa Code Supplement chapter 231D and this chapter.

**24.14(4)** The accrediting entity shall annually provide DIA and the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 20 working days after the publication is released.

### **321—24.15(231D) Requirements for accredited adult day services programs.** Each accredited program shall:

**24.15(1)** Provide DIA a copy of the survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

**24.15(2)** Notify DIA by the most expeditious means possible of any credible report of alleged improper or inappropriate conduct or conditions and any actions taken by the accrediting entity with respect thereto.

**24.15(3)** Notify DIA within two working days of the expiration, suspension, revocation or other loss of a program's accreditation.

### **321—24.16(231D) Maintenance of program accreditation.**

**24.16(1)** An accredited program shall continue to be recognized for certification by DIA if both of the following requirements are met:

a. The program complies with the requirements outlined in 24.15(231D).

b. The program maintains voluntary accreditation for the duration of the time-limited certification period.

**24.16(2)** A program that does not maintain its voluntary accreditation status must become certified by DIA prior to any lapse in accreditation.

**24.16(3)** A program that does not maintain its voluntary accreditation status and is not certified by DIA prior to any lapse in voluntary accreditation shall be considered an uncertified program.

### **321—24.17(231D) Transfer of certification.**

**24.17(1)** A certificate, unless conditionally issued, suspended or revoked, may be transferable to a new owner/sponsor of a program.

**24.17(2)** The new owner/sponsor is required to notify DIA in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all requirements of Iowa Code Supplement chapter 231D and this chapter.

**24.17(3)** DIA may conduct an on-site monitoring evaluation within 90 days following a change in ownership or management corporation to ensure that the program complies with requirements and shall take any necessary enforcement action authorized by Iowa Code Supplement chapter 231D and this chapter.

### **321—24.18(231D) Structural and life safety reviews for a new program.**

**24.18(1)** Prior to construction or remodeling of a building for use in a new program, DIA shall review blueprints for compliance with requirements pursuant to 24.41(231D). Construction and remodeling shall include new construction, modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**24.18(2)** A program applicant shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0038.

**24.18(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in the delay of the blueprint plan review until the fee is received.

**24.18(4)** DIA shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

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**24.18(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA to state how any noncompliance with requirements will be resolved.

**24.18(6)** Upon final notification by DIA that the blueprints meet structural and life safety requirements, construction or remodeling of the program may commence.

**24.18(7)** DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for certification.

**321—24.19(231D) Structural and life safety reviews for existing programs.**

**24.19(1)** In lieu of a blueprint review, DIA shall conduct an on-site visit of the structure for a program in operation on or before May 19, 2004, for compliance with structural requirements pursuant to this chapter.

**24.19(2)** DIA shall notify the program applicant in writing of the status of compliance with requirements within ten working days following the on-site visit.

**24.19(3)** The program applicant shall resolve any noncompliance with requirements prior to approval for certification.

**24.19(4)** The program applicant shall submit with the application the preliminary plan review fee stated in 321—Chapter 27.

**24.19(5)** Failure to submit the preliminary plan review fee with the application shall result in the delay of review of the application for certification until the fee is received.

**321—24.20(231D) Structural and life safety review prior to the remodeling of a building for certified programs.**

**24.20(1)** Prior to the remodeling of a building for a program, DIA shall review the blueprints for compliance with requirements pursuant to 24.41(231D).

**24.20(2)** A certified program shall submit blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 to DIA at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

**24.20(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**24.20(4)** DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**24.20(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

**24.20(6)** Upon final notification by DIA that the blueprints meet structural and life safety requirements, remodeling of the program may commence.

**24.20(7)** DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for continued certification or recertification.

**321—24.21(231D) Emergency response policies and procedures review.** A program applicant or certified program shall submit emergency response policies and procedures with the application to DIA at the address stated in 24.3(1).

Failure to submit the emergency policies and procedures with the application shall delay the review of the application for certification until receipt of the information. The emergency response policies and procedures shall comply with the requirements pursuant to this chapter.

**321—24.22(231D) Program alteration.** A program shall notify DIA within ten working days of any operational changes that are a deviation from the most current certification or recertification application and associated documentation.

**321—24.23(231D) Cessation of program operation.**

**24.23(1)** If a certified program ceases operation at any time prior to expiration of the program's certification, the program shall submit the certificate and written notice to DIA at least 90 days in advance of closure unless there is some type of emergency.

**24.23(2)** If a certified program plans to cease operation at the time the program's certification expires, the program shall provide written notice of this fact to DIA and the department at least 90 calendar days prior to expiration of the certification.

**24.23(3)** At the time the program decides to cease operations, the program shall submit plans to DIA and make arrangements for the safe and orderly transfer of all participants within the 90-day period specified by subrule 24.23(2).

**24.23(4)** DIA or another appropriate agency shall do on-site monitoring during the 90-day period to ensure the safety of participants during the transfer process.

**24.23(5)** DIA may conduct an on-site visit to verify that the program has ceased operation in accordance with the notice provided by the program.

**321—24.24(231D) Contractual agreement.**

**24.24(1)** At the time of a participant's admission, the participant and the program shall enter into a contractual agreement that clearly describes the rights and responsibilities of the participant and of the program.

**24.24(2)** The contractual agreement shall be in 12-point type or larger and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the participant or the participant's legal representative.

**24.24(3)** The contractual agreement shall state current certification status of the program and contain language stating that the program complies with all state and federal codes, administrative rules and federal regulations applicable to adult day services.

**24.24(4)** Upon admission, each participant or legal representative, if applicable, shall sign a contractual agreement and a managed risk policy disclosure statement.

**24.24(5)** The written contractual agreement shall include, but not be limited to, the following:

- a. A description of all fees, scheduled days, transportation agreements, charges and rates;
- b. A statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources will be accepted by the program;
- c. The procedure to be followed if a participant fails to make payment;
- d. Identification of the party responsible for payment of fees;
- e. A statement that the program will give written notification to the participant at least 30 days in advance of any changes to the contractual agreement;

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f. A statement that all participant information will be maintained in a confidential manner to the extent allowable under state and federal law;

g. The toll-free number for the dependent adult abuse hotline;

h. The telephone number for filing a complaint with DIA.

**24.24(6)** The program shall maintain written documentation of the participant's or legal representative's receipt of the following:

a. A copy of admission and transfer criteria;

b. A copy of the internal appeal process for involuntary transfer;

c. A copy of the emergency response policy;

d. A copy of the staffing policy which identifies how staffing will be adapted to changing participant needs;

e. A copy of the services and programming provided to meet the life skills and social activity needs of participants;

f. A procedure for filing a complaint with DIA, including contact information;

g. A copy of the program's statement on participants' rights.

**24.24(7)** A participant who is subject to an involuntary transfer initiated solely by the program and not as a result of a monitoring evaluation or complaint investigation by DIA shall not be transferred until an internal appeal process is completed if one is requested by the participant or legal representative.

**24.24(8)** A copy of the contract shall be provided to the participant or legal representative, if any, and the program shall keep a copy.

**24.24(9)** The contractual agreement shall be reviewed and updated as necessary to reflect the changes in the services and financial arrangements.

**24.24(10)** A copy of the contractual agreement form shall be made available to the general public upon request. The basic marketing material shall include a statement that the contractual agreement is available to all persons upon request.

**321—24.25(231D) Admission to and transfer from a program.**

**24.25(1)** Evaluation prior to admission or transfer. A program shall, upon a participant's admission or transfer, evaluate each proposed participant's functional, cognitive and health status and abilities to determine the participant's eligibility for the program, including whether needed services can be provided. The evaluation shall be conducted by a health care professional or a human service professional.

**24.25(2)** Evaluation within 30 days of admission or transfer. After the participant's initial evaluation, a program shall evaluate each participant's functional, cognitive and health status and abilities within 30 days and then at least annually or more often as needed, to determine the participant's continued eligibility for the program and to determine any modifications to needed services. The evaluation shall be conducted by a health care professional or a human service professional.

**24.25(3)** Criteria for exclusion of participants. A program shall not knowingly admit or retain a participant who:

a. Is bed-bound; or

b. Requires routine three-person assistance with standing, transfer or evacuation; or

c. Is dangerous to self or others, including but not limited to a participant who:

(1) Despite intervention, chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or

(2) Displays behavior that places another participant at risk; or

d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or

e. Is under age 18; or

f. Requires more than part-time or intermittent health-related care; or

g. On a routine basis has unmanageable incontinence.

**24.25(4)** Disclosure of additional admission or transfer criteria. A program may have additional admission or transfer criteria if disclosed in the written contractual agreement prior to admission.

**24.25(5)** Assistance with transfer. A program shall provide assistance to a participant and legal representative, if applicable, to ensure a safe and orderly transfer when the participant meets program transfer requirements.

**24.25(6)** Appeal of an involuntary transfer. Under contractual agreement, each participant shall have the right to an internal appeal of an involuntary transfer.

**24.25(7)** Visiting days. A program may choose to allow a visiting day(s) prior to admission.

**321—24.26(231D) Waiver of admission and retention criteria.**

**24.26(1)** Upon receipt of a waiver petition submitted by a program, DIA may grant a waiver of the admission and retention criteria under 24.27(231D) for an individual participant on a time-limited basis.

**24.26(2)** Waiver procedures. The following procedures shall be used to request and to receive approval of a waiver from the admission and retention criteria:

a. A program shall submit a request on a form and in a manner designated by DIA for a waiver from the admission and retention criteria for an individual participant as soon as it becomes apparent that a participant meets the transfer criteria;

b. DIA shall respond in writing to a request within two working days of receipt of required documentation;

c. The program shall notify DIA within five working days of any changes in the condition of the participant as described in the approved waiver request.

**321—24.27(231D) Criteria for granting admission and retention waivers.** DIA shall use the following criteria in granting a waiver:

1. It is the informed choice of the participant or legal representative, if applicable, to remain in the program; and

2. The program is able to obtain the staff necessary to meet the participant's service needs in addition to the service needs of the other participants; and

3. The waiver shall not jeopardize the health, safety, security or welfare of the party for whom the waiver is being requested or other program participants or program staff.

**321—24.28(231D) Participant documents.**

**24.28(1)** A file for each participant shall be maintained at the program and shall contain:

a. Admission record, including participant's name, birth date, and home address; identification numbers; date of admission; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

b. Application forms;

c. Initial evaluations and updates;

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- d. Nutritional assessment as necessary;
- e. Initial individual service plan and updates;
- f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;
- g. Signed authorization for the participant to receive emergency medical care if necessary;
- h. When appropriate, medical information sheet, documentation of health professional, treatment, therapy, medication and service notes;
- i. Advance health care directives as applicable;
- j. A complete copy of the participant's contractual agreement including any updates;
- k. Written acknowledgment that the participant or the participant's legal representative, if applicable, has been fully informed of the participant's rights;
- l. Copy of guardianship, power of attorney, conservatorship or other documentation of a legal representative as necessary.

**24.28(2)** The program records relating to a participant shall be retained for a minimum of three years after the transfer or death of the participant before the records are destroyed.

**24.28(3)** All records shall be protected from loss, damage and unauthorized use.

### **321—24.29(231D) Service plan.**

**24.29(1)** A service plan shall be developed for each participant based on the evaluation conducted under 24.25(1) and 24.25(2) and designed to meet the specific service needs of the individual participant.

**24.29(2)** Upon admission of a participant, an initial service plan shall be developed by a health care professional or human service professional in consultation with the participant and, if applicable, with the legal representative. All persons who develop the plan and the participant or legal representative shall sign the plan.

**24.29(3)** The service plan shall be updated within 30 days of the participant's admission and shall subsequently be updated at least annually and whenever changes are needed. The service plan shall be updated in consultation with a multidisciplinary team that consists of at least three individuals, including a health care professional and other staff as appropriate to meet the needs of the participant, in consultation with the participant and, at the participant's request, with other individuals identified by the participant, and, if applicable, with the participant's legal representative.

**24.29(4)** The service plan shall be individualized and shall indicate, at a minimum:

- a. The participant's identified needs and participant's requests for assistance and expected outcomes;
- b. Any services and care to be provided pursuant to the occupancy agreement with the participant;
- c. The provider(s) if other than the program; and
- d. For participants who are unable to plan their own activities, including participants with dementia, planned and spontaneous activities based on the participant's abilities and personal interests.

### **321—24.30(231D) Medications.**

**24.30(1)** Each program shall have a written medication policy that includes the following:

- a. Participants shall self-administer medications unless:
  - (1) The prescription states that the participant is not to self-administer the medication; or
  - (2) The participant or, if applicable, the legal representative, delegates administration to the program by contractual

agreement or signed service plan. The program shall not prohibit a participant from self-administering medications.

b. Participants shall keep their own medications in their possession unless:

(1) The prescription states that the medication is to be stored by the program; or

(2) The participant or, if applicable, the legal representative delegates partial or complete control of medications to the program by contractual agreement or signed service plan.

c. The program shall list in the participant's record any medications to be stored or administered by the program.

d. When partial or complete control of medication is delegated to the program by the participant, appropriate staff may transfer medication from the original prescription containers into medication reminder boxes or medication cups in the participant's presence.

**24.30(2)** When the medications are administered or stored by the program, the following requirements shall apply:

a. The administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and 655—subrule 6.3(1) and Iowa Code chapter 155A.

b. The program shall document any medication the program has agreed to administer or store.

c. The medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

d. The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

e. No person other than the dispensing pharmacist shall alter a prescription label.

f. The program shall follow a written policy that complies with federal and state codes and administrative rules regarding controlled substances.

g. The program shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

**321—24.31(231D) Nurse review.** A program that administers prescription medications or provides health care professional-directed or health-related care shall provide for a registered nurse to:

**24.31(1)** Monitor, at least every 90 days, each participant receiving program-administered prescription medications for adverse reactions to program-administered medications and make appropriate interventions or referral, and ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders at least every 90 days or after a change in health status; and

**24.31(2)** Ensure that health professionals' orders for participants receiving health care professional-directed care from the program are current; and

**24.31(3)** Assess and document the health status of each participant, make recommendations and referrals as appropriate, and monitor progress on previous recommendations at least every 90 days or if there are changes in health status; and

**24.31(4)** Provide the program with written documentation of the activities, as set forth in 24.31(1) through 24.31(3), showing the date, time and signature.

### **321—24.32(231D) Nursing assistant work credit.**

**24.32(1)** A person certified as a nursing assistant who is supervised by a licensed nurse in the program may submit in-

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formation to DIA to obtain credit toward maintaining certification for working in the program.

**24.32(2)** The program shall complete and submit to DIA an Iowa Nurse Aide Registry Application for each nursing assistant working in the program. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurse aides/> under the "Resource" tab.

**24.32(3)** The program shall complete and submit to DIA an Iowa Nurse Aide Registry Quarterly Employment Report whenever a change in employment for a certified nursing assistant occurs. The report may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurse aides/> under the "Resource" tab.

### **321—24.33(231D) Food service.**

**24.33(1)** The program shall have the capacity to provide hot or other appropriate meals and snacks or coordinate with other community providers to make arrangements for the availability of meals and snacks. A period of no more than four hours shall lapse between the service of meals and of snacks.

**24.33(2)** Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

**24.33(3)** Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 1/3 percent if the program provides one meal per day;
- b. A minimum of 66 2/3 percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

**24.33(4)** Therapeutic diets are not required but may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual, Iowa State Press, shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and reviewing procedures for preparation and service of food for therapeutic diets.

**24.33(5)** Personnel who are employed by or contracting with the program and who are responsible for preparing or serving food, or both preparing and serving food, shall have an orientation on sanitation and safe food handling prior to handling food and annual in-service training on food protection. At a minimum, one person directly responsible for food preparation shall have successfully completed a state-approved food protection program.

**24.33(6)** Programs engaged in the preparation and serving of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and serving of food, including the requirements imposed under Iowa Code chapter 137F.

### **321—24.34(231D) Staffing.**

**24.34(1)** Sufficient trained staff shall be available at all times to fully meet participants' identified needs. No fewer than two staff persons who monitor participants as indicated

in each participant's service plan shall be awake and on duty during all hours of operations when two or more participants are present.

**24.34(2)** A program that serves one or more participants with cognitive disorder or dementia shall follow written procedures that address how the program will respond to the emergency needs of the participant(s).

**24.34(3)** The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and the target population.

**24.34(4)** Any nursing services shall be available in accordance with Iowa Code chapter 152 and 655—Chapter 6.

**24.34(5)** The program shall have a training and staffing plan on file and shall maintain documentation of training received by program personnel.

**24.34(6)** All personnel of a program shall be able to implement the program's accident, fire safety and emergency procedures.

### **321—24.35(231D) Dementia-specific education for personnel.**

**24.35(1)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of six hours of dementia-specific education and training prior to or within 90 days of employment or the beginning date of the contract.

**24.35(2)** The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with activities of daily living;
- h. The importance of the care plan and social history information;
- i. Skills in working with challenging participants;
- j. Techniques for simplifying, cueing, and redirecting; and
- k. Staff support and stress reduction.

**24.35(3)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of six hours of dementia-specific continuing education annually.

### **321—24.36(231D) Another business or activity in an adult day services program.**

**24.36(1)** A business or activity serving persons other than participants is allowed in a designated part of the physical structure in which the program is provided, if the other business or activity meets the requirements of the applicable state and federal codes, administrative rules, and federal regulations.

**24.36(2)** A business or activity conducted in the designated part of the physical structure in which the program is provided shall not interfere with the use of the program by

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participants, or interfere with services provided to participants or be disturbing to participants.

**24.36(3)** A business or activity conducted in the designated part of the physical structure in which the program is provided shall not reduce space, services or staff available to participants or necessary to meet the needs of the participants.

**321—24.37(231D) Managed risk statement.** The program shall have a managed risk statement which includes the participant's or, if applicable, the legal representative's signed acknowledgment of the shared responsibility for identifying and meeting needs of the participant and the process for managing risk and upholding participant autonomy when participant decision making may result in poor outcomes for the participant or others.

**321—24.38(231D) Life safety—emergency policies and procedures and structural safety requirements.**

**24.38(1)** The program shall have and follow written emergency policies and procedures, which include the following elements:

- a. Emergency plan (identify where located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Fire drill procedures;
- g. Regulations about smoking;
- h. Interior and exterior maintenance of buildings and grounds;
- i. Furnishings;
- j. Monitoring and testing of smoke-control systems;
- k. Evacuation of participants; and
- l. Procedures for reporting and documentation.

**24.38(2)** A program that serves persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall also include written procedures regarding appropriate staff response if a participant with cognitive impairment or dementia is missing.

**24.38(3)** The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for adult day services programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the facility is in compliance with these requirements is necessary for certification of a program.

**321—24.39(231D) Transportation.** When transportation services are provided directly or under contract with the program:

1. The vehicle shall be accessible and appropriate to the participants using it, with consideration for any physical disabilities and impairments.
2. Every participant who is being transported shall have a seat in the vehicle, except those participants who remain in their wheelchairs.
3. Wheelchairs shall be secured when the vehicle is in motion.
4. Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-bound passengers.
5. During loading and unloading of a participant, the driver shall be in the proximate area of the other participants in a vehicle.

6. Assistance, if needed, shall be provided from the ground floor of the participant's residence to the ground floor of the facility.

7. The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. The driver shall meet any state and federal requirements for licensure or certification for the vehicle operated.

8. Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

**321—24.40(231D) Activities.**

**24.40(1)** The program shall provide appropriate activities for each program participant. The type of activities shall reflect a participant's preferences, abilities, desires, history, family system, ethnic and cultural experiences, faith community, personal beliefs and values by providing a variety of opportunities and experiences that have meaning and purpose for the program participant.

**24.40(2)** Activities shall be planned to support the participant's service plan and shall be consistent with the program statement and admission policies.

**24.40(3)** A written schedule of activities shall be developed at least monthly and made available to participants or their legal representatives.

**24.40(4)** Participants shall be given the opportunity to select the degree to which they choose to participate in all activities offered in the program.

**24.40(5)** Appropriate activities shall be offered at all times when participants are present.

**321—24.41(231D) Structural requirements.**

**24.41(1)** The structure, equipment and physical environment of the program shall be designed and operated to meet the needs of the participants. The building, grounds and equipment shall be well-maintained, clean, safe and sanitary.

**24.41(2)** There shall be at least one toilet for every ten participants and staff members.

**24.41(3)** Toilets and bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

**24.41(4)** There shall be a ratio of at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand-washing facilities shall be readily accessible to participants and staff.

**24.41(5)** Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

**24.41(6)** Signaling emergency call devices shall be installed or placed in all bathroom areas, restroom stalls and showers, if any.

**24.41(7)** A telephone shall be available to participants to make and receive calls in a private manner and for emergency purposes.

**24.41(8)** Program supplies and participants' possessions shall be stored in such a manner that, when not in use, will prevent personal injury to participants and staff.

**24.41(9)** The program shall provide a separate area to permit privacy for evaluations and to isolate participants who become ill.

**24.41(10)** The program shall meet other building and public safety codes, including:

- a. Americans with Disabilities Act.
- b. Applicable regulations of the Occupational Safety and Health Administration.
- c. Rules pertaining to accessibility contained in the Iowa state building code, administration section, division 7, and provisions of the Iowa state building code relating to persons with disabilities.



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d. Other applicable provisions of the Iowa state building code and local building codes.

**24.41(11)** The program shall have the means to control the maximum temperature of water at sources accessible by a participant to prevent scalding and shall do so for participants with cognitive impairment or dementia or at the request of a participant.

**321—24.42(231D) Interpretive guidelines.** The department shall develop interpretive guidelines as situations arise requiring them.

These rules are intended to implement Iowa Code Supplement chapter 231D.

[Filed 3/26/04, effective 5/19/04]

[Published 4/14/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/14/04.

## ARC 3299B

### ELDER AFFAIRS DEPARTMENT[321]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby rescinds Chapter 25, "Non-Facility-Based Respite Care," and adopts new Chapter 25, "Assisted Living Programs," Iowa Administrative Code.

This chapter establishes requirements for program certification and standards for assisted living programs. An appeal process for involuntary tenant transfer is established in 25.23(6).

These rules will be subject to waiver at the discretion of the Department in accordance with 321—Chapter 11, "Waivers or Variances from Administrative Rules" (published herein as **ARC 3300B**), except for specific waiver provisions stated in 321—25.24(231C).

Notice of Intended Action was published February 4, 2004, in the Iowa Administrative Bulletin as **ARC 3146B**. A public hearing was held over the Iowa Communications Network (ICN) on February 25, 2004. Comments were received at the public hearing and in writing. The comments received resulted in the following changes from the Notice of Intended Action:

1. The following changes were made to the definitions in rule 25.1(231C):
  - Definitions of "accredited" and "nonaccredited" were added.
  - The definition of "assisted living" was clarified by adding a sentence stating that this chapter applies to all assisted living facilities.
  - The definition of the term "program" was changed to reflect the varied usage of the word throughout the chapter.
  - The term "qualified professional" was changed to address confusion regarding the requirements for inspection of operating systems in facilities.
2. Rule 25.2(231C) was reworded to clarify the relationship between "accredited" and "certified" facilities.
3. In subrule 25.4(7), the reference to a "licensed" home health agency was changed to "certified."
4. Subrules 25.5(1), 25.18(4) and 25.18(5) were amended to accommodate reasonable and flexible time frames in the application process.

5. Subrules 25.22(1) and 25.22(2) were combined to eliminate confusion, and the remaining subrules were renumbered.

6. The requirement for a sixth-grade reading level was deleted from 25.22(2).

7. In subrule 25.29(2) and paragraph 25.29(2)"a," the reference to "supervision of self-administration" was deleted.

8. In paragraph 25.29(2)"g," the phrase "within the tenant's unit" was deleted and the phrase "in the tenant's presence" was added.

9. Subrule 25.37(2) was reorganized and the following new paragraph was added:

"a. Have an operating alarm system connected to each exit door."

10. Subrule 25.37(3) was reworded to clarify that facilities must meet requirements of the State Fire Marshal's rules and that approval from the State Fire Marshal is required for certification as an assisted living facility.

11. Wording was added to paragraph 25.40(1)"e" to clarify the applicability of the Life Safety Code and the rules of the State Fire Marshal to facilities.

12. Various numbering and grammatical changes were made as needed.

The Commission adopted this chapter during the regularly scheduled meeting on March 23, 2004.

These rules will become effective on May 19, 2004.

These rules are intended to implement Iowa Code Supplement chapter 231C.

The following amendment is adopted.

Rescind 321—Chapter 25 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 25 ASSISTED LIVING PROGRAMS

##### **321—25.1(231C) Definitions.**

"Accredited" means that the program has received accreditation from the entities named in subrule 25.14(1).

"Allied health care professional" means a person licensed through the department of public health, other than a physician, physician assistant, registered nurse or advanced registered nurse practitioner, who provides health care services to the tenant.

"Assistance" means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall not be construed to mean the tenant has not participated in the task or activity.

"Assisted living" means provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure, which provides a homelike environment. "Assisted living" also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. "Assisted living" includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. The requirements of this chapter are applicable to all assisted living facilities. There may be other requirements for specific facilities contained in other chapters under agency number 321.

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“CARF” means the Rehabilitation Accreditation Commission.

“Cognitive disorder” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

“Dementia” means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

“Dementia-specific assisted living program” means an assisted living program certified under this chapter that either serves five or more tenants with dementia between Stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“Department” means the department of elder affairs.

“DIA” means the department of inspections and appeals.

“Dwelling unit” means an apartment, group of rooms, or single room that is occupied as a separate living quarter or, if vacant, that is intended for occupancy as a separate living quarter, in which the occupant(s) can live and sleep separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

“Global Deterioration Scale” means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

“Health care” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.

“Health care professional” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“Human service professional” means an individual with at least a bachelor’s degree in a human service field including human services, gerontology, social work, sociology, psychology, and family science. Experience in a human service field may be substituted for up to two years of required education.

“Instrumental activities of daily living” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

“In the proximate area” means located within a less-than-five-minute response time.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

“Legal representative” means a person appointed by the court to act on behalf of the tenant, or a person acting pursuant to a power of attorney.

“Modification” means any addition to or change in dimensions or structure except as incidental to the customary maintenance of the program structure.

“Nonaccredited” means that the program has been certified under the provisions of this chapter but has not received accreditation from the entities named in subrule 25.14(1).

“Nurse-delegated assistance” means delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

“Occupancy agreement” means a written contract entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and the tenant and other information required by rule. The occupancy agreement may include a separate signed lease and signed service agreement.

“Part-time or intermittent care” means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for temporary periods of time with a predictable end within 21 days; or licensed nursing services and professional therapies in combination with nurse-delegated assistance with medications or activities of daily living that do not exceed 28 hours per week.

“Personal care” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, housekeeping essential to the health and welfare of the tenant, and supervising of self-administered medications, but does not include the administration of medications.

“Program” shall have one of the following meanings, determined by the context of the particular rule under consideration:

1. A person. Unless otherwise provided by law, “person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

2. A physical facility, structure or building utilized in an assisted living program.

3. Services provided to persons eligible for assisted living residency as defined in this chapter.

“Qualified professional” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling or electrical contractor who furnishes regular service to such equipment.

“Recognized accrediting entity” means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department.

“Remodeling” means modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

“Routine” means regular, customary or not occasional or intermittent.

“Self-administration” means a tenant’s taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“Service plan” means the document that defines the services to meet the needs and preferences of a tenant.

“Supervision of self-administration” means a staff person’s activities such as routine prompting and reminding, opening of containers or packaging at the direction of the tenant, or reading instructions or other label information in order for a tenant to self-administer a medication.

“Tenant” means an individual who receives assisted living services pursuant to an occupancy agreement through a certified assisted living program.

“Tenant advocate” means the office of long-term care resident’s advocate established in Iowa Code Supplement section 231.42.

“Unmanageable incontinence” means a condition that requires staff provision of total care for an incontinent tenant

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who lacks the ability to assist in bladder or bowel continence care.

**321—25.2(231C) Program certification.** A program may become certified by meeting all the requirements in Iowa Code Supplement chapter 231C and the applicable rules of this chapter. In addition, a program may be voluntarily accredited by either CARF or JCAHO. For the purpose of these rules, certification is equivalent to licensure. A current certificate shall be visibly displayed within the designated area of the operation of the program.

**321—25.3(231C) Certification of a nonaccredited program.**

**25.3(1)** The applicant shall complete an approved application packet obtained from the department of inspections and appeals (DIA). Application materials may be obtained from the health facilities division Web site at [www.dia-hfd.state.ia.us](http://www.dia-hfd.state.ia.us); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**25.3(2)** The applicant shall submit one copy of the completed application and all supporting documentation to DIA at the above address at least 60 calendar days prior to the expected date of beginning operation.

**25.3(3)** The appropriate fees, as stated in 321—Chapter 27, shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. The fees are nonrefundable.

**25.3(4)** DIA shall consider the application when all supporting documents and fees are received.

**321—25.4(231C) Nonaccredited program application content.** An application for certification or recertification of a nonaccredited program shall include the following:

**25.4(1)** A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the changes.

**25.4(2)** A statement affirming that the individuals listed in 25.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**25.4(3)** A statement disclosing whether any of the individuals listed in 25.4(1) have or have had an ownership interest in an assisted living program, adult day services, elder group home, home health agency, or licensed health care facility as defined under Iowa Code Supplement section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

**25.4(4)** A copy of the current policy and procedure for evaluation of each tenant, which includes a copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant.

**25.4(5)** Identification of target population.

**25.4(6)** A copy of the current service plan format.

**25.4(7)** If the program contracts for personal care or health-related care services from a certified home health

agency, mental health center or a licensed health care facility, a copy of that entity's current license or certification.

**25.4(8)** The current policy and procedure for addressing medication needs of tenants.

**25.4(9)** The current policy and procedure describing accident and emergency response.

**25.4(10)** A copy of the current tenant occupancy agreement.

**25.4(11)** The current policy and procedure for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

**25.4(12)** A copy of the current state license for the entity providing food service, whether it is the program or an outside entity or a combination of both.

**25.4(13)** A copy of the written policies and procedures for food service relating to staffing, nutrition, menu planning, therapeutic diets, preparation, service and storage.

**321—25.5(231C) Initial certification process for a nonaccredited program.**

**25.5(1)** DIA shall determine whether or not the proposed program meets applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval.

**25.5(2)** DIA shall notify the applicant within 5 working days of any preliminary certification determination.

a. If the determination is to certify, DIA shall issue a conditional certification not to exceed one year.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

**25.5(3)** A conditional certification shall allow the applicant to begin operation and accept tenants into the program.

**25.5(4)** Within 90 calendar days following issuance of conditional certification, DIA shall conduct an on-site monitoring evaluation to determine compliance with the provisions of Iowa Code Supplement chapter 231C and this chapter.

**25.5(5)** If regulatory insufficiencies are identified as a result of the on-site monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report.

**25.5(6)** DIA shall make a final certification decision based on the results of the monitoring evaluation and review of an acceptable plan of correction.

**25.5(7)** DIA shall notify the program of a final certification decision within 10 working days following the finalization of the on-site monitoring evaluation report or receipt of an acceptable plan of correction, whichever is applicable.

**25.5(8)** If the decision is to continue certification, DIA shall issue a full two-year certification effective from the date of the original conditional certification.

**25.5(9)** If the decision is to discontinue certification through denial, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,231D).

**321—25.6(231C) Recertification of a nonaccredited program.**

**25.6(1)** Certification of a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

**25.6(2)** DIA shall send recertification application materials to each program at least 120 calendar days prior to expiration of its certification.

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**321—25.7(231C) Recertification process for a nonaccredited program.** To obtain recertification, a program shall:

**25.7(1)** Submit one copy of the completed application, including the information required in 25.4(231C), associated documentation and the recertification fee as listed in 321—Chapter 27 to DIA at the address stated in 25.3(1) at least 90 calendar days prior to the expiration of the program's certification.

**25.7(2)** Submit additional documentation that the following systems have been inspected by a qualified professional and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking area, laundry, and elevators.

**321—25.8(231C) Notification of recertification for a nonaccredited program.**

**25.8(1)** DIA shall review the application and associated documentation and fees for completion and notify the program of application status within 10 working days of receipt of the required application materials.

**25.8(2)** DIA shall conduct an on-site monitoring evaluation of the program between 60 and 90 days prior to expiration of the program's certification.

**25.8(3)** If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. Within 10 working days of receiving all finalized documentation, including state fire marshal approval and an acceptable plan of correction, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter and make a recertification decision.

**25.8(4)** If no regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings with the final recertification decision. Within 15 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter and make a recertification decision.

**25.8(5)** If the decision is to recertify, DIA shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

**25.8(6)** If the decision is to deny recertification, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,231D).

**25.8(7)** If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

**321—25.9(231C) Certification and recertification process for an accredited program.**

**25.9(1)** An applicant program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from DIA. Application materials may be obtained from the health facilities division Web site at [www.dia-hfd.state.ia.us](http://www.dia-hfd.state.ia.us); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

b. Submit a copy of the current accreditation outcome from a recognized accrediting entity.

c. Apply for certification within 30 calendar days following verification of compliance with life safety requirements pursuant to this chapter for a program in operation on or before May 19, 2004.

d. Apply for recertification within 60 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

e. Maintain compliance with life safety requirements pursuant to this chapter.

f. Submit the appropriate fees as set forth in 321—27.2(231C).

**25.9(2)** DIA shall not consider an application until it is complete and received with all supporting documentation and the appropriate fees.

**321—25.10(231C) Accredited program certification or recertification application content.** An application for certification or recertification of an accredited program shall include the following:

**25.10(1)** A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change.

**25.10(2)** A statement affirming that the individuals listed in 25.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**25.10(3)** A statement disclosing whether any of the individuals listed in 25.10(1) have or have had an ownership interest in a program, adult day services program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code Supplement section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

**25.10(4)** Identification of target population.

**25.10(5)** A copy of the current accreditation outcome from the recognized accrediting entity.

**321—25.11(231C) Initial certification process for an accredited program.**

**25.11(1)** DIA shall determine whether or not the accredited program meets applicable requirements contained in Iowa Code Supplement chapter 231C and these rules within 20 working days of receiving all finalized documentation, including state fire marshal approval.

**25.11(2)** DIA shall notify the accredited program within 10 working days of the final certification decision.

a. If the decision is to certify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

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c. Certification for a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

**321—25.12(231C) Recertification process for an accredited program.**

**25.12(1)** DIA shall send recertification application materials to each program at least 90 calendar days prior to expiration of its certification.

**25.12(2)** To obtain recertification, an accredited program shall submit one copy of the completed application and associated documentation including the administrative fee as stated in 321—27.2(231C) to DIA at the address stated in 25.9(231C) at least 60 calendar days prior to the expiration of the program's certification.

**25.12(3)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in these rules and make a recertification decision.

**25.12(4)** DIA shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny recertification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

**25.12(5)** If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

**321—25.13(231C) Duration of certification for all programs.**

**25.13(1)** Certification as a nonaccredited program by DIA shall be applicable for two years, unless conditionally issued, suspended or revoked.

**25.13(2)** Certification as an accredited program by DIA shall be applicable for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity. DIA shall maintain a list of all certified programs. The list shall be readily available at DIA upon request.

**321—25.14(231C) Recognized accrediting entity.**

**25.14(1)** The department designates CARF and JCAHO as recognized accrediting entities for programs.

**25.14(2)** To apply for designation by the department as a recognized accrediting entity for programs, an accrediting organization shall submit a letter of request and meet the accrediting entity requirements in this rule.

**25.14(3)** The designation shall remain in effect for so long as the accreditation standards continue to meet the minimum requirements of Iowa Code Supplement chapter 231C and this chapter.

**25.14(4)** The accrediting entity shall provide annually to DIA and the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 20 working days after the publication is released.

**321—25.15(231C) Requirements for an accredited program.** Each accredited program shall:

**25.15(1)** Provide DIA a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

**25.15(2)** Notify DIA by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the accredited program and any actions taken by the accrediting entity with respect thereto.

**25.15(3)** Notify DIA within two working days of the expiration, suspension, revocation or other loss of a program's accreditation.

**321—25.16(231C) Maintenance of program accreditation.**

**25.16(1)** An accredited program shall continue to be recognized for certification by DIA if both of the following requirements are met:

a. The program complies with the requirements outlined in 25.15(231C).

b. The program maintains its voluntary accreditation status for the duration of the time-limited certification period.

**25.16(2)** A program that does not maintain its voluntary accreditation status must become certified by DIA prior to any lapse in accreditation.

**25.16(3)** A program that does not maintain its voluntary accreditation status and is not certified by DIA prior to any lapse in voluntary accreditation shall be considered an uncertified program.

**321—25.17(231C) Transfer of certification.**

**25.17(1)** A certificate, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program.

**25.17(2)** The new owner is required to notify DIA in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all requirements of Iowa Code Supplement chapter 231C and this chapter.

**25.17(3)** DIA may conduct an on-site monitoring evaluation within 90 days following a change in ownership or management corporation to ensure that the program complies with requirements and shall take any necessary enforcement action authorized by Iowa Code Supplement chapter 231C and this chapter.

**321—25.18(231C) Structural and life safety reviews for a new program.**

**25.18(1)** Prior to construction or remodeling of a building for use in a new program, DIA shall review the blueprints for compliance with requirements pursuant to this chapter. Construction and remodeling shall include new construction, modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**25.18(2)** A program applicant shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

**25.18(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**25.18(4)** DIA shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**25.18(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA to state how any noncompliance with requirements will be resolved.

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**25.18(6)** Upon final notification by DIA that the blueprints meet structural and life safety requirements, construction or remodeling of the program may commence.

**25.18(7)** DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for certification.

**321—25.19(231C) Structural and life safety review prior to the remodeling of a building for a certified program.**

**25.19(1)** Prior to the remodeling of a building for a certified program, DIA shall review the blueprints for compliance with requirements pursuant to 25.40(231C). Remodeling shall include modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**25.19(2)** A certified program shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

**25.19(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**25.19(4)** DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**25.19(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

**25.19(6)** Upon final notification by DIA that the blueprints meet structural and life safety requirements, remodeling of the program may commence.

**25.19(7)** DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for continued certification or recertification.

**321—25.20(231C) Emergency response policies and procedures review.** A program applicant or certified program shall submit emergency response policies and procedures with the application to DIA at the address stated in 25.3(1). Failure to submit the emergency response policies and procedures with the application shall delay the review of the application for certification until receipt of the information. The emergency response policies and procedures shall comply with the requirements of this chapter.

**321—25.21(231C) Cessation of program operation.**

**25.21(1)** If a certified program ceases operation at any time prior to expiration of the program's certification, the program shall submit the certificate to DIA. The program shall provide, at least 90 days in advance of closure unless there is some type of emergency, written notification to DIA, the department, and the tenant advocate of the date the operation will cease.

**25.21(2)** If a certified program plans to cease operation at the time the program's certification expires, the program shall provide written notice of this fact to DIA, the department and the tenant advocate at least 90 days prior to expiration of the certification.

**25.21(3)** At the time a program decides to cease operation, the program shall submit a plan to DIA and make arrangements for the safe and orderly transfer of all tenants within the 90-day period specified by 25.21(2).

**25.21(4)** DIA or another appropriate agency shall conduct on-site monitoring during the 90-day period to ensure safety of tenants during the transfer process.

**25.21(5)** DIA may conduct an on-site visit to verify that the program has ceased operation in accordance with the notice provided by the program.

**321—25.22(231C) Occupancy agreement.**

**25.22(1)** Prior to the tenant's taking occupancy, the tenant or tenant's legal representative, if applicable, and the program shall enter into an occupancy agreement that clearly describes the rights and responsibilities of the tenant and of the program, and shall sign a managed risk policy disclosure statement.

**25.22(2)** The occupancy agreement shall be in 12-point type or larger, and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the tenant or the tenant's legal representative.

**25.22(3)** The written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

a. A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

b. A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the assisted living program.

c. The procedure followed for nonpayment of fees.

d. Identification of the party responsible for payment of fees and identification of the tenant's representative, if any.

e. The term of the occupancy agreement.

f. A statement that the assisted living program shall notify the tenant or the tenant's representative, as applicable, in writing at least 30 days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the assisted living program.

g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer. The internal appeals process provided relative to an involuntary transfer.

i. The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.

j. A statement of the prohibition against retaliation as prescribed in Iowa Code Supplement section 231C.13.

k. The emergency response policy.

l. The staffing policy which specifies if the staff is available 24 hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

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m. In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.

n. The refund policy.

o. A statement regarding billing and payment procedures.

p. The telephone number for filing a complaint with DIA.

q. The telephone number for the office of the tenant advocate.

r. A copy of the program's statement on tenants' rights.

s. A statement that the tenant landlord law applies to assisted living programs.

**25.22(4)** A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

**25.22(5)** The occupancy agreement shall be reviewed and updated as necessary to reflect the change in the services and financial arrangements.

**25.22(6)** A copy of the most current occupancy agreement form shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

**25.22(7)** A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.

**321—25.23(231C) Occupancy in and transfer from a program.**

**25.23(1)** Evaluation prior to occupancy. A program shall evaluate each proposed tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy in order to determine the tenant's eligibility for the program, including whether services needed can be provided. The evaluation shall be conducted by a health care professional or a human service professional.

**25.23(2)** Evaluation within 30 days of occupancy. A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy and as needed, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any modifications to needed services. The evaluation shall be conducted by a health care professional or a human service professional.

**25.23(3)** Criteria for exclusion of tenants. A program shall not knowingly admit or retain a tenant who:

a. Is bed-bound; or  
b. Requires routine two-person assistance with standing, transfer or evacuation; or

c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:

(1) Despite intervention chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or

(2) Displays behavior that places another tenant at risk; or  
d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or

e. Is under the age of 18; or

f. Requires more than part-time or intermittent health-related care; or

g. On a routine basis, has unmanageable incontinence.

**25.23(4)** Disclosure of additional occupancy and transfer criteria. A program may have additional occupancy or transfer criteria if disclosed in the written occupancy agreement prior to occupancy.

**25.23(5)** Assistance with transfer. A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer when the tenant meets program transfer requirements.

**25.23(6)** Right to appeal involuntary transfer. Under the occupancy agreement and Iowa Code Supplement section 231C.6, each tenant shall have the right to an internal appeal of an involuntary transfer.

**321—25.24(231C) Waiver of occupancy and retention criteria.**

**25.24(1)** Upon receipt of a waiver petition submitted by a program, DIA may grant a waiver of the occupancy and retention criteria under 25.25(231C) for an individual tenant on a time-limited basis.

**25.24(2)** Waiver procedures. The following procedures shall be used to request and to receive approval of a waiver from the occupancy and retention criteria:

a. A program shall submit a request for a waiver from the occupancy and retention criteria for an individual tenant on a form and in a manner designated by DIA as soon as it becomes apparent that a tenant meets the criteria.

b. DIA shall respond in writing to a request within two working days of receipt of required documentation.

c. The program shall provide written notification to DIA within five working days of any changes in the condition of the tenant as described in the approved waiver request.

**321—25.25(231C) Criteria for granting occupancy and retention waivers.** DIA shall use the following criteria in granting a waiver:

1. It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program; and

2. The program is able to obtain the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants; and

3. The waiver shall not jeopardize the health, safety, security or welfare of the tenant for whom the waiver is being requested, program staff, or other program tenants.

**321—25.26(231C) Involuntary transfer.**

**25.26(1)** Program initiation of transfer. If a program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by DIA, and if the tenant or tenant's legal representative contests the transfer, the following procedure shall apply:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information for the tenant advocate.

b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification to the tenant.

c. The tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

**25.26(2)** Transfer pursuant to results of monitoring evaluation or complaint investigation by DIA. If one or more tenants are identified as meeting the occupancy and transfer criteria and need to be transferred as a result of a monitoring

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evaluation or complaint investigation conducted by DIA, the following procedures shall apply:

a. DIA shall notify the program, in writing, within 20 working days of the monitoring evaluation or complaint investigation, of the identification of any tenant(s) meeting occupancy and transfer criteria, as a part of the report of the findings.

b. The program, each tenant identified, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide specific input, written comment, information and documentation directly addressing any agreement or disagreement with the identification.

c. The program shall submit one response, including all inputs received, to DIA. The response shall identify the tenant and others submitting input, and also identify with particularity their agreement or disagreement. The program's response shall be submitted to DIA within 10 working days of the receipt of the report of the findings. Submission of a response does not eliminate the requirement under this chapter or 321—Chapter 26 to submit a plan of correction to address the regulatory insufficiency.

d. Within 10 working days of receipt of the program's response for each identified tenant, DIA shall consider the response and make a determination regarding continued inclusion of a tenant.

e. If DIA's determination is to amend the regulatory insufficiency based on the response, DIA shall modify the report of findings and send an amended report to the program.

f. If the determination is to uphold the regulatory insufficiency, DIA shall review the plan of correction in accordance with this chapter and 321—Chapter 26. DIA shall notify the program of the opportunity for the program or the tenant or the tenant's legal representative, as applicable, to appeal the report findings as they relate to the occupancy and transfer decision. In addition, DIA shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

g. For each tenant identified in the final report, if the program is in agreement with the report and the tenant or the tenant's legal representative, if applicable, disagrees with the report, the tenant or the tenant's legal representative, if applicable, may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

h. For each tenant identified in the final report, if the tenant or the tenant's legal representative, if applicable, and the program disagree with the report, both parties may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

i. The tenant advocate shall offer the notified tenant or tenant's legal representative, if applicable, assistance with the appeal process. The tenant or the tenant's legal representative, if applicable, is not obligated to use the services of the tenant advocate.

j. Any appeal filed under 321—subrule 26.3(2) shall stay any enforcement action regarding the regulatory insufficiency related to the occupancy and transfer decision and shall be heard within 30 days of receipt of the appeal.

k. Actions regarding any regulatory insufficiency, other than the occupancy and transfer decision, shall follow procedures as provided in Iowa Code Supplement chapter 231C, this chapter and 321—Chapter 26.

l. An appeal under 321—subrule 26.3(2) shall automatically extend the expiration date of the program's certification until such time as the administrative case is resolved.

m. In lieu of or in addition to the provisions of this subrule, the program may request a waiver from DIA within 10 working days of the receipt of the report to allow a tenant to remain in the program. DIA may grant a waiver for a period not to exceed 90 calendar days.

**321—25.27(231C) Tenant documents.**

**25.27(1)** A file for each tenant shall be maintained at the program and shall contain:

a. An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of occupancy; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

b. Application forms;

c. Initial evaluation and updates;

d. Nutritional assessment as necessary;

e. Initial individual service plan and updates;

f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;

g. Signed authorization for the tenant to receive emergency medical care if necessary;

h. When appropriate, medical information sheet, documentation of health professionals' order, treatment, therapy, medication and service notes;

i. Advance health care directives as applicable;

j. A complete copy of the tenant's occupancy agreement including any updates;

k. Written acknowledgement that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;

l. A copy of guardianship, power of attorney, or conservatorship or other documentation of a legal representative as necessary.

**25.27(2)** The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant before the records are destroyed.

**25.27(3)** All records shall be protected from loss, damage and unauthorized use.

**321—25.28(231C) Service plan.**

**25.28(1)** A service plan shall be developed for each tenant based on the evaluations conducted in accordance with 25.23(1) and 25.23(2), and shall be designed to meet the specific service needs of the individual tenant.

**25.28(2)** Prior to the tenant's signing the occupancy agreement and taking occupancy, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan. The service plan shall subsequently be updated at least annually and whenever changes are needed.

**25.28(3)** When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of occupancy and as needed, but not less than annually, by a multidisciplinary team that consists of no fewer than three individuals, including a health care professional and other staff appropriate to meet the needs of the tenant, in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative.



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**25.28(4)** The service plan shall be individualized and shall indicate, at a minimum:

- a. The tenant's identified needs and the tenant's requests for assistance and expected outcomes;
- b. Any services and care to be provided pursuant to the occupancy agreement with the tenant;
- c. The service provider(s) if other than the program; and
- d. For tenants who are unable to plan their own activities, including tenants with dementia, planned and spontaneous activities based on the tenant's abilities and personal interests.

**321—25.29(231C) Medications.**

**25.29(1)** Each program shall follow a written medication policy that includes the following:

- a. Tenants shall self-administer medications unless:
  - (1) The prescription states that the tenant is not to self-administer the medication; or
  - (2) The tenant or the tenant's legal representative delegates administration of the medication to the program in the occupancy agreement or signed service plan. The program shall not prohibit a tenant from self-administering medications.
- b. Tenants shall keep their own medications in their possession unless:
  - (1) The prescription states that the medication is to be stored by the program; or
  - (2) The tenant or the tenant's legal representative, if applicable, delegates partial or complete control of medications to the program in the occupancy agreement or signed service plan.
- c. The program shall list in the tenant's record any medications to be stored or administered by the program.
- d. When partial or complete control of medication is delegated to the program by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups in the tenant's presence.

**25.29(2)** When medications are administered or stored by the program, the following requirements shall apply:

- a. The administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and 655—subrule 6.3(1) and Iowa Code chapter 155A.
- b. The program shall document any medication the program has agreed to administer or store.
- c. Medication shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.
- d. The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.
- e. No person other than the dispensing pharmacist shall alter a prescription label.
- f. Each tenant's medication shall be stored in its originally received container.
- g. When partial or complete control of medication is delegated to the program by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups in the tenant's presence.
- h. Each program shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

**321—25.30(231C) Nurse review.** A program that administers prescription medications or provides health care

professional-directed or health-related care shall provide for a registered nurse to:

**25.30(1)** Monitor, at least every 90 days, or after a change in condition, each tenant receiving program-administered prescription medications for adverse reactions to program-administered medications and make appropriate interventions or referral, and ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

**25.30(2)** Ensure that health care professionals' orders for tenants receiving health care professional-directed care from the program are current; and

**25.30(3)** Assess and document the health status of each tenant, make recommendations and referrals as appropriate, and monitor progress on previous recommendations at least every 90 days or if there are changes in health status; and

**25.30(4)** Provide the program with written documentation of the activities, as set forth in 25.30(1) through 25.30(3), showing the time, date and signature.

**321—25.31(231C) Nursing assistant work credit.**

**25.31(1)** A person certified as a nursing assistant who is supervised by a licensed nurse may submit information to DIA to obtain credit toward maintaining certification for working in a program.

**25.31(2)** A program shall complete and submit to DIA an Iowa Nurse Aide Registry Application for each nursing assistant working in the program. A licensed nurse working in the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurse aides/> under the "Resource" tab.

**25.31(3)** A program shall complete and submit to DIA an Iowa Nurse Aide Registry Quarterly Employment Report whenever a change in employment for a certified nursing assistant occurs. The report may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurse aides/> under the "Resource" tab.

**321—25.32(231C) Food service.**

**25.32(1)** The program shall provide or coordinate with other community providers to provide hot or other appropriate meal(s) at least once a day or make arrangement for the availability of meals.

**25.32(2)** Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

**25.32(3)** Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 1/3 percent if the program provides one meal per day;
- b. A minimum of 66 2/3 percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

**25.32(4)** Therapeutic diets are not required but may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by Iowa State Press shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for

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writing and approving the therapeutic menu and for reviewing procedures for preparation and service of food for therapeutic diets.

**25.32(5)** Personnel who are employed by or contracting with the program and who are responsible for preparing or serving food, or both preparing and serving food, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection. At a minimum, one person directly responsible for food preparation shall have successfully completed a state-approved food protection program.

**25.32(6)** Programs engaged in the preparation and serving of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and serving of food, including the requirements imposed under Iowa Code chapter 137F.

### **321—25.33(231C) Staffing.**

**25.33(1)** Sufficient trained staff shall be available at all times to fully meet tenants' identified needs.

**25.33(2)** A dementia-specific assisted living program shall have one or more staff persons who monitor tenants as indicated in each tenant's service plan. The staff shall be awake and on duty 24 hours a day in the proximate area, and check on tenants as indicated in the tenants' service plans.

**25.33(3)** Each tenant shall have access to a 24-hour personal emergency response system that automatically identifies the tenant in distress and can be activated with one touch.

**25.33(4)** A program serving one or more tenants with cognitive disorder or dementia shall follow a system, a program or written staff procedures in lieu of a personal emergency response system that address how the program will respond to the emergency needs of the tenant(s).

**25.33(5)** The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

**25.33(6)** Any nursing services shall be available in accordance with Iowa Code chapter 152 and 655—Chapter 6.

**25.33(7)** The program shall have training and staffing plans on file, and shall maintain documentation of training received by program personnel.

**25.33(8)** All personnel of a program shall be able to implement the program's accident, fire safety and emergency procedures.

### **321—25.34(231C) Dementia-specific education for program personnel.**

**25.34(1)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of six hours of dementia-specific education and training prior to or within 90 days of employment or the beginning date of the contract.

**25.34(2)** The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;

f. The importance of planned and spontaneous activities;

g. Skills in providing assistance with instrumental activities of daily living;

h. The importance of the service plan and social history information;

i. Skills in working with challenging tenants;

j. Techniques for simplifying, cueing, and redirecting; and

k. Staff support and stress reduction.

**25.34(3)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of six hours of dementia-specific continuing education annually.

**25.34(4)** An employee who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 25.34(1).

### **321—25.35(231C) Another business or activity in an assisted living program.**

**25.35(1)** A business or activity serving persons other than tenants of a program is allowed in a designated part of the physical structure in which the program is provided, if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

**25.35(2)** A business or activity conducted in the designated part of the physical structure in which the program is provided shall not interfere with the use of the program by tenants, interfere with services provided to tenants, or be disturbing to tenants.

**25.35(3)** A business or activity conducted in the designated part of the physical structure in which the program is provided shall not reduce space, services or staff available to tenants or necessary to meet the needs of the tenants.

**321—25.36(231C) Managed risk statement.** The program shall have a managed risk statement which includes the tenant's or, if applicable, the legal representative's signed acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

### **321—25.37(231C) Life safety—emergency policies and procedures and structural safety requirements.**

**25.37(1)** The program shall follow written emergency policies and procedures, which include the following elements:

- a. Emergency plan (identify where located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Procedures for fire drills;
- g. Regulations about smoking;
- h. Monitoring and testing of smoke-control systems;
- i. Evacuation of tenants; and
- j. Procedures for reporting and documentation.

**25.37(2)** A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have:

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a. An operating alarm system connected to each exit door; and

b. Written procedures regarding appropriate staff response if a tenant with cognitive impairment or dementia is missing.

**25.37(3)** The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for assisted living facilities in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the facility is in compliance with these requirements is necessary for certification of a program.

**25.37(4)** The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding, and shall do so for tenants with cognitive impairment or dementia or at a tenant's request.

**321—25.38(231C) Transportation.** When transportation services are provided directly or under contract with the program:

1. The vehicle shall be accessible and appropriate to the tenants using it, with consideration for any physical disabilities and impairments.

2. Every tenant who is being transported shall have a seat in the vehicle, except those tenants who remain in their wheelchairs.

3. Wheelchairs shall be secured when the vehicle is in motion.

4. Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-bound passengers.

5. During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

6. The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

7. Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

**321—25.39(231C) Activities.**

**25.39(1)** The program shall provide appropriate programming for each tenant. Programming shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

**25.39(2)** Activities shall be planned to support the tenant's service plan and shall be consistent with the program statement and occupancy policies.

**25.39(3)** A written schedule of activities shall be developed at least monthly and made available to tenants and their legal representatives.

**25.39(4)** Tenants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

**321—25.40(231C) Structural requirements.**

**25.40(1)** General requirements.

a. The structure of the program shall be designed and operated to meet the needs of the tenants.

b. The buildings and grounds shall be well-maintained, clean, safe and sanitary.

c. Programs shall have private dwelling units with a single-action lockable entrance door.

d. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the lock on an

entrance door, and shall do so if the presence of the lock presents a danger to the health and safety of the tenant.

e. The structure in which a program is housed shall be built at a minimum of Type V (111) construction as given in Section 22.3.1.3.3 and Sections 6.2.1A to 6.2.2 of NFPA 101, Life Safety Code, 1994 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, or as required in administrative rules promulgated by the state fire marshal.

f. Programs may have individual cooking facilities within the private dwelling units. Any program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or easily remove appliances, and shall do so if the presence of cooking appliances presents a danger to the health and safety of the tenant or others.

**25.40(2)** Programs certified prior to July 4, 2001. Facilities for programs certified prior to July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.

c. A dwelling unit used for double occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.

d. The program shall have a minimum common area of 15 square feet per tenant.

**25.40(3)** New construction built on or after July 4, 2001. Programs operated in new construction built on or after July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 240 square feet of floor area, excluding bathrooms and door swing.

c. A dwelling unit used for double occupancy shall have a total square footage of not less than 340 square feet of floor area, excluding bathrooms and door swing.

d. Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the sink or bathing facility water control, and shall do so if the presence of the water control presents a danger to the health and safety of the tenant.

e. The program shall have a minimum of 25 square feet of common space per tenant.

**25.40(4)** Structure being converted to or rehabilitated for use for a program on or after July 4, 2001. A program operating in a structure that was converted or rehabilitated for use for a program on or after July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that has not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 190 square feet of floor area, excluding bathrooms and door swing.

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c. A dwelling unit used for double occupancy shall have a total square footage of not less than 290 square feet of floor area, excluding bathrooms and door swing.

d. The program shall have a minimum common area of 15 square feet per tenant dedicated for use by the program tenants.

e. Each dwelling unit shall have a bathroom, including but not limited to a toilet, sink and bathing facilities.

f. Each sleeping room shall have a minimum of 5.7 square feet of operable window. Waiver of this requirement may be granted by the state fire marshal or designee.

**321—25.41(231C) Dwelling units in dementia-specific programs.** Dementia-specific programs are exempt from subrules 25.40(2) to 25.40(4) as follows:

**25.41(1)** For a program built in a family or neighborhood design:

a. Each dwelling unit used for single occupancy shall have total square footage of not less than 150 square feet of floor area, excluding a bathroom;

b. Each dwelling unit used for double occupancy shall have total square footage of not less than 250 square feet of floor area, excluding a bathroom; and

c. The common areas shall be increased by the equivalent of the waived square footage.

**25.41(2)** Self-closing doors are not required for individual dwelling units or bathrooms.

**25.41(3)** Dementia-specific programs may choose not to provide bathing facilities in the living units.

**321—25.42(231C) Landlord and tenant Act.** Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to programs under this chapter.

**321—25.43(231C) Interpretive guidelines.** The department shall develop interpretive guidelines as situations arise requiring them.

These rules are intended to implement Iowa Code Supplement chapter 231C.

[Filed 3/26/04, effective 5/19/04]

[Published 4/14/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/14/04.

## ARC 3301B

### ELDER AFFAIRS DEPARTMENT[321]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14, the Department of Elder Affairs hereby rennumbers Chapter 26, "Elder Group Homes," as Chapter 29, "Elder Group Homes"; and adopts a new Chapter 26, "Monitoring, Civil Penalties, Complaints and Investigation for Adult Day Services and Assisted Living Programs"; and rescinds Chapter 27, "Assisted Living Programs," and adopts a new Chapter 27, "Fees For Adult Day Services and Assisted Living Programs," Iowa Administrative Code.

These amendments establish procedures for the filing and investigation of complaints related to the regulated programs and establish fees applicable to and penalties for noncompliance with Chapter 24, "Adult Day Services Programs," and Chapter 25, "Assisted Living Programs." In addition,

procedures are established for emergency removal of tenants of assisted living programs and participants of adult day services programs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 3000B**. A public hearing was held on January 7, 2004. Comments were received at the public hearing and in writing. The comments resulted in the following changes from the Notice:

In subrule 26.2(5), introductory paragraph, the phrase "and, for assisted living programs, the tenant advocate" has been deleted.

In rule 321—26.3(17A,231C,231D), the phrase "and rules promulgated by the Iowa department of elder affairs" has been added.

In subrule 26.3(2), introductory paragraph, the phrase "If a program continues to fail or refuses to comply" has been added to the first sentence.

Rule 321—26.7(17A,21,231C,231D) has been revised to require that a notice be posted in a prominent public location that states that copies of the survey report or any complaint findings are available upon request.

In subrule 26.10(1), the phrase "visitor or program personnel" has been deleted.

The Commission adopted these amendments during the Commission meeting held on March 23, 2004.

These amendments will become effective May 19, 2004.

These amendments are intended to implement Iowa Code chapters 17A and 21 and Iowa Code Supplement chapters 231C and 231D.

The following amendments are adopted.

ITEM 1. Renumber **321—Chapter 26** as **321—Chapter 29**.

ITEM 2. Adopt the following **new** chapter:

#### CHAPTER 26

#### MONITORING, CIVIL PENALTIES, COMPLAINTS AND INVESTIGATION FOR ADULT DAY SERVICES AND ASSISTED LIVING PROGRAMS

**321—26.1(17A,231C,231D) Adult day services/assisted living program monitoring.**

**26.1(1)** The department of inspections and appeals (DIA) shall monitor a certified program at least once during the program's certification period.

**26.1(2)** All records and areas of the program deemed necessary to determine compliance with the requirements for certification under 321—Chapters 24 and 25 shall be accessible to DIA for purposes of monitoring.

**321—26.2(17A,231C,231D) Complaint procedure.**

**26.2(1)** Any person with concerns regarding the operations and service delivery of a program may file a complaint with the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

**26.2(2)** Upon receipt of a complaint made in accordance with this rule, DIA shall make a preliminary review of the complaint to determine if a potential violation of 321—Chapter 24 for adult day services programs or 321—Chapter 25 for assisted living programs, as applicable, exists. If a potential violation exists, DIA shall make or cause to be made an on-site investigation of the program within 20 working days unless there is the possibility of immediate harm.

**26.2(3)** For any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, DIA shall:

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- a. Promptly investigate the allegation.
- b. Take certification enforcement action, as appropriate, in accordance with this chapter.
- c. Notify the accrediting entity by the most expeditious means possible of any actions taken by DIA with respect to certification enforcement.

**26.2(4)** DIA shall apply a preponderance-of-evidence standard in determining whether or not a complaint is substantiated.

**26.2(5)** DIA shall notify the department, the program, and, if known, the complainant, of the results of the complaint investigation as follows:

- a. If regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the complaint investigation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, within 10 working days of receiving an acceptable plan of correction and shall determine whether any enforcement action related to continued certification is necessary.

- b. If no regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings within 15 days following the on-site investigation.

**321—26.3(17A,231C,231D) Enforcement action.** DIA may take the following actions as a result of noncompliance with Iowa Code Supplement chapter 231C for assisted living programs and Iowa Code Supplement chapter 231D for adult day services programs and rules promulgated by the Iowa department of elder affairs.

**26.3(1)** In lieu of denial, suspension or revocation, DIA may issue a conditional certification for a period of up to one year. In the issuance of a conditional certification, DIA shall specify the issues of noncompliance and the period of time required to comply with each issue. At any time up to 10 working days following the required compliance period, the program shall provide written notification to DIA of the program's compliance with requirements. Following receipt of the program notification, DIA shall make a final certification decision and may conduct an on-site monitoring evaluation to verify compliance prior to making the final decision. Failure by the program to submit timely notification of compliance to DIA shall result in suspension or revocation of the conditional certification and may result in further enforcement action as available under Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable. DIA shall notify the program of a final certification decision within 15 working days following receipt of the program notification or on-site monitoring evaluation, whichever is later, or following the program's failure to timely notify DIA of compliance.

**26.3(2)** Civil penalty. If a program continues to fail or refuses to comply, DIA may assess a civil penalty, which shall be paid to DIA within ten working days following assessment, as follows:

- a. A program in noncompliance with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, that results in imminent danger or a substantial probability of resultant death or physical harm to a participant or tenant, up to but not to exceed \$10,000.

- b. Following receipt of notice from DIA, a program which fails or refuses to comply with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, within prescribed time frames set out by DIA when such noncompliance has a direct relationship to the health, safety or security of program participants or tenants, up to but not to exceed \$5,000.

**321—26.4(17A,231C,231D) Notice—hearings.**

**26.4(1)** The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, gives written notice to DIA requesting a hearing, in which case the notice shall be deemed to be suspended.

**26.4(2)** The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

**26.4(3)** At any time at or prior to the hearing, DIA may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

**321—26.5(17A,231C,231D) Appeals.** All appeals authorized under Iowa Code Supplement section 231C.11 or 231D.6 shall be conducted pursuant to 481—Chapter 10.

**321—26.6(17A,231C,231D) Judicial review.** Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

**321—26.7(17A,21,231C,231D) Public disclosure of findings.** The program shall post a notice in a prominent public location in the facility stating that copies of the final report resulting from a monitoring evaluation or a complaint investigation are available upon request. Copies shall be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083, telephone: (515) 281-6325.

**321—26.8(17A,231C,231D) Discrimination or retaliation.** A tenant of an assisted living program or a participant of an adult day services program, or a legal representative or family member of a tenant or participant, if applicable, or an employee of the program may file a complaint with DIA if a person has been the subject of discrimination or retaliation as prohibited by Iowa Code Supplement section 231C.13 or 231D.12. DIA shall follow the complaint procedures outlined in 26.2(17A,231C,231D). A program found in violation of Iowa Code Supplement section 231C.13 or 231D.12 shall be assessed a civil penalty of \$1,000, which shall be paid to DIA within ten working days following assessment.

**321—26.9(17A,231C,231D) Emergency removal of participants or tenants.** If DIA determines that the health or safety of participants in an adult day services program or tenants in an assisted living program is in immediate danger and the tenants or participants need to be removed from the program, DIA shall use the following procedures to ensure a safe and orderly transfer.

**26.9(1)** DIA shall notify the local area agency on aging; the department; the departments of human services, public health, and transportation; law enforcement agencies; and the tenant advocate, as necessary and appropriate, to alert

ELDER AFFAIRS DEPARTMENT[321](cont'd)

them to the need to transfer participants or tenants from a program and to request assistance in identifying alternative programs or other appropriate settings and in contacting the participants or tenants, legal representatives and family members of participants or tenants, if applicable, and others as appropriate, including health care professionals.

**26.9(2)** DIA shall notify the program on site of the immediate need to transfer participants or tenants and of assistance available, in coordination with the appropriate parties under 26.9(1).

**26.9(3)** DIA shall proceed with the transfer of participants or tenants.

**26.9(4)** DIA may suspend a program's certification prior to a hearing.

**321—26.10(231C,231D) Notification of casualties.** DIA shall be notified by telephone within 24 hours, and may request a written report following notification, in the following situations:

**26.10(1)** Any accident or incident causing substantial injury to or death of a participant or tenant.

**26.10(2)** When damage to the program as a result of fire, natural or other disaster impairs the program's ability to function.

These rules are intended to implement Iowa Code chapters 17A and 21 and Iowa Code Supplement chapters 231C and 231D.

ITEM 3. Rescind 321—Chapter 27 and adopt the following new chapter in lieu thereof:

CHAPTER 27  
FEES FOR ADULT DAY SERVICES  
AND ASSISTED LIVING PROGRAMS

**321—27.1(231D) Adult day services program fees.**

1. Two-year initial certification of a nonaccredited program is \$750.
2. Two-year recertification of a nonaccredited program is \$1,000.
3. Blueprint review is \$900.
4. Optional preliminary plan review is \$500.

**321—27.2(231C) Assisted living program fees.**

1. Two-year initial certification of a nonaccredited program is \$750.
2. Two-year recertification of a nonaccredited program is \$1,000.
3. Administrative fee for an accredited program is \$125.
4. Blueprint review is \$900.
5. Optional preliminary plan review is \$500.

These rules are intended to implement Iowa Code Supplement chapters 231C and 231D.

[Filed 3/26/04, effective 5/19/04]

[Published 4/14/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/14/04.

## ARC 3281B

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2776B**. Six public hearings were held with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from 26 persons and organizations. The majority of the comments were made concerning the numerical criteria for chloride and the numerical criterion for total dissolved solids (TDS). A responsiveness summary addressing the comments may be obtained from the Department of Natural Resources.

The adopted amendments have been modified in two ways from those published under Notice of Intended Action. The amendment to add 14 stream segments as Class B(LR) Limited Resource warm water will now add only 13 of the stream segments to the document "Surface Water Classification." These changes are based on new and old warm water field use assessments of the streams. Following consideration of comments made during the comment period, the Department recommended terminating the rule-making efforts on the designation of the Little Wapsipinicon River until more field data can be obtained.

At the March 15, 2004, meeting, the Environmental Protection Commission acted to terminate rule making efforts for chloride and TDS, that appeared as Items 3 and 4 in the Notice of Intended Action. In addition, the EPC made recommendations to:

- Sample and monitor chloride and TDS for adequate data to make an informed decision including the possible costs and returns associated with clean and healthy water.
- Monitor aquatic ecosystem impacts through biological surveys, particularly where aquatic life may be impacted as a result of current effluent levels of cations and anions. Coordinate with and utilize fisheries personnel where possible.
- Utilize the EPA to make sure options being considered are consistent with the Federal Clean Water Act including court directives.
- Review stream classifications to be sure that the uses of streams are properly classified.
- Sponsor a workshop with help from EPA and Iowa scientists on alternative solutions to hard water, solutions for managing effluent during low flow conditions, new technology in waste treatment, and health considerations of effluent when reentering the drinking water supply.
- Continue consideration of site-specific WET tests but with maximum standards to protect aquatic ecosystems, livestock and wildlife watering and other uses in current rules.

These amendments may have an impact on small business. These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments shall become effective May 19, 2004. The following amendments are adopted.

ITEM 1. Amend subrule **61.2(5)** by striking "April 1, 1996" and inserting the effective date of this amendment,

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and amend subrule **61.3(5)** by striking "July 16, 2003" and inserting the effective date of this amendment, "May 19, 2004."

ITEM 2. Amend subrule **61.2(5)**, paragraph "a," as follows:

a. The allowable 3°C temperature increase criterion for warm water interior streams, ~~61.3(3)"f"(1), 61.3(3)"b"(5)"1,"~~ is based in part on the need to protect fish from cold shock due to rapid cessation of heat source and resultant return of the receiving stream temperature to natural background temperature. On low flow streams, in winter, during certain conditions of relatively cold background stream temperature and relatively warm ambient air and groundwater temperature, certain wastewater treatment plants with relatively constant flow and constant temperature discharges will cause temperature increases in the receiving stream greater than allowed in ~~61.3(3)"f"(1), 61.3(3)"b"(5)"1."~~

[Filed 3/18/04, effective 5/19/04]

[Published 4/14/04]

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**ARC 3276B****LANDSCAPE ARCHITECTURAL  
EXAMINING BOARD[193D]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 544B.5, the Landscape Architectural Examining Board hereby amends Chapter 2, "Examinations and Licensing," Iowa Administrative Code.

The amendment establishes a fee for replacement of a licensee's wall certificate. This amendment is subject to waiver pursuant to 193—Chapter 5.

Notice of Intended Action was published in the January 21, 2004, Iowa Administrative Bulletin as **ARC 3113B**. No comments were received from the public. The adopted amendment is identical to that published under Notice.

The amendment was adopted by the Board on March 11, 2004.

This amendment will become effective May 19, 2004.

This amendment is intended to implement Iowa Code chapters 17A and 544B.

The following amendment is adopted.

Amend rule 193D—2.10(544B,17A) as follows:

**193D—2.10(544B,17A) Fee schedule.** The appropriate examination fee or examination exemption filing fee shall accompany the application. Filing fees are not refundable.

Examination fee	not to exceed \$1000
Initial examination filing fee	\$50
Proctoring fee	\$50
Examination exemption fee	\$300
Certificate <del>reissuance</del> of registration fee	\$50
(This certificate is to be effective to the June 30 which is at least 12 months beyond the date of application.)	
Wall certificate replacement fee	\$25

Certificate of license fee \$15/month

(This certificate of license is to be effective the day of board action until June 30.)

Biennial registration fee \$350

[Filed 3/16/04, effective 5/19/04]

[Published 4/14/04]

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**ARC 3286B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic Examiners hereby amends Chapter 40, "Administrative and Regulatory Authority for the Board of Chiropractic Examiners," and Chapter 41, "Licensure of Chiropractic Physicians"; rescinds Chapter 45, "Discipline for Chiropractic Physicians," and adopts a new Chapter 45 with the same title; and amends Chapter 46, "Fees," Iowa Administrative Code.

These amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of name and address changes, and criteria and fees for obtaining a duplicate or reissued license and wallet card. Licensees who regularly examine, attend, counsel or treat adults or children will be required to document at the time of renewal that they have completed the mandatory training on abuse identification and reporting. These amendments also adopt a new discipline chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3133B**. A public hearing was held on February 28, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Two public comments were received requesting that language be retained from the existing rules regarding the licensee's responsibilities to pay the biennial renewal fee and to maintain patient records. As a result, the following changes to the Notice were made:

- Added language to subrule 41.81 relating to a licensee's responsibility to pay the biennial renewal fee on or before the renewal date.

- Added language to subrule 45.2(2) relating to a licensee's responsibility to maintain patient records.

In addition, comments were received from the Assistant Attorney General requesting that wording in 45.2(2), paragraph "e," be changed to conform to language other boards have used, and that paragraphs "a" and "b" in 45.2(6) be deleted.

Finally, the wording of 45.2(2)"g"(2), regarding retention of records for minors, has been changed.

These amendments were adopted by the Board of Chiropractic Examiners on March 24, 2004.

These amendments will become effective May 19, 2004.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrules 40.4(2) and 40.4(3) as follows:

**40.4(2)** Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's cur-

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

rent mailing address within 30 days after the change of address occurs.

**40.4(3)** Notice of change of name. Each licensee shall notify the board *in writing* of ~~any~~ a change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend the parenthetical implementation for rule 645—40.6(17A) as follows:

**645—40.6(17A 21)**

ITEM 3. Adopt new subrules 40.6(3) and 40.6(4) as follows:

**40.6(3)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

**40.6(4)** Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 40** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 151 and 272C.

ITEM 5. Amend paragraph **41.2(1)“d”** as follows:

d. No applicant shall be considered for licensure until official copies of academic transcripts are received by the board directly from a chiropractic school accredited by the CCE and approved by the board. *The transcript must display the date of graduation and the degree conferred.*

ITEM 6. Amend subrule **41.2(1)** by renumbering paragraphs “e” to “g” as “f” to “h” and adopting new paragraph “e” as follows:

e. An applicant shall submit an official certificate of completion of 120 hours of physiotherapy from a board-approved chiropractic college. The physiotherapy course must include a practicum component.

ITEM 7. Rescind paragraph **41.6(2)“f”** and adopt new paragraphs “f” and “g” as follows:

f. Holds or has held a current license and provides evidence of one of the following requirements:

(1) Completion of 60 hours of board-approved continuing education during the immediately preceding two-year period as long as the applicant had an active practice within the last five years; or

(2) Practice as a licensed chiropractic physician for a minimum of one year during the immediately preceding two-year period; or

(3) The equivalent of one year as a full-time faculty member teaching chiropractic in an accredited chiropractic college for at least one of the immediately preceding two years; or

(4) Graduation from a board-approved chiropractic college within the immediately preceding two years from the date the application is received in the board office.

g. If the applicant does not meet the requirements of paragraph 41.6(2)“f,” the applicant shall submit the following:

(1) Evidence of satisfactory completion of 60 hours of board-approved continuing education during the immediately preceding two-year period; and

(2) Evidence of successful completion of the SPEC examination within one year prior to receipt of the application in the board office.

ITEM 8. Rescind rule 645—41.8(151) and adopt the following new rule in lieu thereof:

**645—41.8(151) License renewal.**

**41.8(1)** The biennial license renewal period for a license to practice chiropractic shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay the biennial renewal fees on or before the renewal date.

**41.8(2)** An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

**41.8(3)** A licensee shall:

a. Meet the continuing education requirements of rule 645—44.2(272C) and the mandatory reporting requirements of subrule 41.8(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

**41.8(4)** Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee’s employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

Training may be completed through separate courses as identified in paragraphs “a” and “b” or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs “a” to “c,” including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education re-



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

quirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 44.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

**41.8(5)** When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

**41.8(6)** A person licensed to practice as a chiropractic physician shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

**41.8(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 46.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 9. Renumber rule **645—41.11(17A,151,272C)** as **645—41.13(17A,151,272C)** and adopt the following new rules:

**645—41.11(147) Duplicate certificate or wallet card.**

**41.11(1)** A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

**41.11(2)** A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—46.1(151).

**41.11(3)** If the board receives a completed application for duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

**645—41.12(147) Reissued certificate or wallet card.** The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—46.1(151).

ITEM 10. Rescind 645—Chapter 45 and adopt the following new chapter in lieu thereof:

CHAPTER 45

DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

**645—45.1(151) Definitions.**

“Board” means the board of chiropractic examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a chiropractic physician in Iowa.

**645—45.2(151,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—45.3(147,272C), when the board determines that the licensee is guilty of any of the following acts or offenses.

**45.2(1)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by

concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**45.2(2)** Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average chiropractic physician acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

g. Failure to maintain for a minimum of five years from one of the following dates, as applicable, clinical and fiscal records in support of services rendered. For the purposes of this rule, clinical records shall include all laboratory and diagnostic imaging studies.

(1) For an adult patient, the last office visit.

(2) Records for minors shall be maintained for a minimum of either (a) one year after the patient reaches the age of majority (18), or (b) five years, whichever is longer.

**45.2(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. This includes representations utilizing the term “physical therapy” when informing the public of the services offered by the chiropractic physician unless a licensed physical therapist is performing such services. Nothing herein shall be construed as prohibiting a chiropractic physician from making representations regarding physiotherapy that may be the same as, or similar to, physical therapy or physical medicine as long as treatment is appropriate as authorized in Iowa Code chapter 151. Proof of actual injury need not be established.

**45.2(4)** Practice outside the scope of the profession.

**45.2(5)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

**45.2(6)** Habitual intoxication or addiction to the use of drugs.

**45.2(7)** Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

**45.2(8)** Falsification of client records.

**45.2(9)** Acceptance of any fee by fraud or misrepresentation.

**45.2(10)** Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**45.2(11)** Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**45.2(12)** Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

**45.2(13)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**45.2(14)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

**45.2(15)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**45.2(16)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

**45.2(17)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**45.2(18)** Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

**45.2(19)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**45.2(20)** Failure to pay costs assessed in any disciplinary action.

**45.2(21)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**45.2(22)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**45.2(23)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a chiropractic physician.

**45.2(24)** Failure to report a change of name or address within 30 days after it occurs.

**45.2(25)** Representing oneself as a chiropractic physician when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

**45.2(26)** Permitting another person to use the licensee's license for any purposes.

**45.2(27)** Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

**45.2(28)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a patient, client or co-worker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

**45.2(29)** Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

**645—45.3(147,272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board, or for a specific period, the licensee's engaging in specified procedures, methods, or acts.

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed \$1000.

9. Issue a citation and warning.

10. Such other sanctions allowed by law as may be appropriate.

**645—45.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;

2. The facts of the particular violation;

3. Any extenuating facts or other countervailing considerations;

4. The number of prior violations or complaints;

5. The seriousness of prior violations or complaints;

6. Whether remedial action has been taken; and

7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 151 and 272C.

ITEM 11. Amend subrule 46.1(6) as follows:

**46.1(6)** Duplicate *or reissued* license *certificate* fee is \$10.

ITEM 12. Renumber subrules **46.1(7)** to **46.1(9)** as **46.1(8)** to **46.1(10)** and adopt the following new subrule:

**46.1(7)** Duplicate or reissued wallet card fee is \$10.

[Filed 3/24/04, effective 5/19/04]

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**ARC 3293B**

**PUBLIC SAFETY  
DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 231D.15, the Department of Public Safety hereby

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amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

Iowa Code section 100.1, subsection 5, assigns to the State Fire Marshal the exclusive authority to adopt fire safety rules in Iowa. Iowa Code Supplement section 231D.15 requires the State Fire Marshal, in coordination with the Department of Elder Affairs and the Department of Inspections and Appeals, to establish fire safety standards for adult day services programs. Compliance with these standards will be required for operation of adult day services programs in Iowa.

The amendments adopt by reference those chapters of the Life Safety Code that are intended to apply to day care occupancies. The Life Safety Code, which is a standard issued by the National Fire Protection Association (NFPA), is a nationally accepted code. Its use complies with a provision of the Code of Iowa that requires the State Fire Marshal generally to adopt NFPA standards.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 2983B**. A public hearing on these amendments was held on January 7, 2004. No substantive comments regarding the amendments were received at the public hearing or otherwise. The amendments adopted here are similar to the proposed amendments, except that dates dependent upon the effective date of these amendments have been inserted and language regarding the operation of a program or remodeling of a facility in relation to the effective date of these amendments has been edited for clarity.

These amendments will become effective June 1, 2004.

These amendments are intended to implement Iowa Code Supplement section 231D.15.

The following amendments are adopted.

ITEM 1. Amend subrule **5.5(2)** by relettering paragraphs "c" through "e" as "d" through "f" and adopting the following new paragraph "c":

c. The inspection fee for an adult day services program certified or seeking certification pursuant to Iowa Code Supplement chapter 231D is \$50 per facility.

ITEM 2. Amend rule 661—5.500(100), introductory paragraph, as follows:

**661—5.500(100) Definitions.** The following definitions apply to rules 661—5.500(100) to 661—5.549 661—5.509.

ITEM 3. Adopt the following new caption and rule:

#### ADULT DAY SERVICES PROGRAMS

#### **661—5.510(231D) Adult day services.**

**5.510(1) Definitions.** The following definitions apply to rule 661—5.510(231D).

"Existing adult day services program" means an adult day services program certified or seeking certification from the department of inspections and appeals pursuant to the provisions of Iowa Code Supplement chapter 231D and which has been in continuous operation in the same facility since May 31, 2004, or before and which has operated continuously since May 31, 2004, in a facility which has not undergone major renovation or remodeling since May 31, 2004.

"New adult day services program" means an adult day services program certified or seeking certification from the department of inspections and appeals pursuant to the provisions of Iowa Code Supplement chapter 231D which has not been in continuous operation since May 31, 2004, or which operates in a facility which has undergone major renovation or remodeling since June 1, 2004.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the

form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

**5.510(2)** Fire safety requirements for existing adult day services programs. NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," is adopted by reference as the rules establishing fire safety requirements for existing adult day services programs. Any existing adult day services program shall comply with the provisions of NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," by June 1, 2005.

EXCEPTION: If the fire marshal finds that a violation of any provision of NFPA 101, Life Safety Code, 2003 edition, Chapter 17, "Existing Day Care Occupancies," presents an imminent threat to the safety of clients or staff, the fire marshal may require correction of the condition or conditions which are in violation as a condition of approval of the facility for use by an adult day services program.

**5.510(3)** Fire safety requirements for new adult day services programs. NFPA 101, Life Safety Code, 2003 edition, Chapter 16, "New Day Care Occupancies," is adopted by reference as the rules establishing fire safety requirements for new adult day services programs.

This rule is intended to implement Iowa Code Supplement section 231D.15.

[Filed 3/25/04, effective 6/1/04]

[Published 4/14/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/14/04.

## **ARC 3292B**

### **PUBLIC SAFETY DEPARTMENT[661]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 231C.4 and 321.4, the Department of Public Safety hereby amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

Iowa Code Supplement section 231C.4 requires the State Fire Marshal, in coordination with the Department of Elder Affairs and the Department of Inspections and Appeals, to adopt rules establishing fire safety standards for assisted living facilities certified to operate in Iowa. When regulation of assisted living facilities in Iowa was first established in 1997, the Fire Marshal adopted rules related to the fire safety of these facilities. Those rules require compliance with the provisions of the 1994 edition of the Life Safety Code which apply to "residential board and care occupancies." The Life Safety Code is a standard adopted and published by the National Fire Protection Association, and three subsequent editions of it have been published since the original adoption of fire safety standards for assisted living facilities in Iowa.

One change has been made in the rule regarding fire safety requirements for assisted living facilities in Iowa since its original adoption. Earlier in 2003, these facilities were given an option of complying with the provisions of the 2000 edition of the Life Safety Code which apply to residential board and care occupancies, rather than the parallel provisions of the 1994 edition. This alternative was offered primarily to accommodate facilities which are collocated with and operated in conjunction with licensed health care facilities. Li-

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censed health care facilities in Iowa which require certification for eligibility for Medicaid and Medicare reimbursement are required to comply with applicable provisions of the 2000 edition of the Life Safety Code.

2003 Iowa Acts, chapter 166, calls for a restructuring of the general regulatory structure applied to assisted living facilities in Iowa. While the amended language of Iowa Code Supplement section 231C.4 does not require the rewriting of the Fire Marshal rules for these facilities, updating these rules is timely. The new fire safety standards for assisted living facilities in Iowa will be based upon the residential board and care occupancy requirements established in the latest edition (2003) of the Life Safety Code. There are three exceptions to these general requirements: (1) assisted living facilities which were initially approved under the requirements of the 1994 edition of the Life Safety Code will be allowed to continue to operate under those requirements, provided that the facilities have been in continuous operation since July 1, 1997, and have not undergone major renovation or remodeling on or after June 1, 2004; (2) assisted living facilities which were approved to operate under the 2000 edition of the Life Safety Code and have been in continuous operation since they initially began operation pursuant to that approval, or which are located in the same structure as or adjacent to a health care facility which is required to comply with provisions of the 2000 edition of the Life Safety Code, may comply with the requirements of the 2000 edition of the Life Safety Code rather than the requirements of the 2003 edition; and (3) facilities which are in compliance with provisions of the Life Safety Code which are contingent upon the facility's residents and staff having evacuation capability ratings of "prompt" or "slow," rather than more stringent requirements which apply to facilities with residents or staff whose evacuation ratings are "impractical," will be required to have evacuation capability ratings performed by qualified health care professionals at the expense of the facility, to have evacuation ratings updated for each new resident or staff member or for any resident or staff member whose health status or mobility capability changes, and to make any records which support evacuation capability ratings of "slow" or "prompt" available to fire inspectors or to personnel of the Department of Inspections and Appeals on request.

These amendments were proposed in a Notice of Intended Action, published in the Iowa Administrative Bulletin on December 10, 2003, as **ARC 2984B**. A public hearing on these amendments was held on January 7, 2004. No substantive comments were received at the public hearing or otherwise. The adopted amendments are similar to those proposed in the Notice of Intended Action, with insertions based upon the effective date of these amendments and some minor additional editing for clarity.

These amendments will become effective June 1, 2004.

These amendments are intended to implement Iowa Code Supplement section 231C.4.

The following amendments are adopted.

Amend rule 661—5.626(231C) as follows:

**661—5.626(231C) Assisted living housing.**

**5.626(1)** Definitions. The following definitions apply to rule 661—5.626(231C):

"Assisted living facility" means provisions of housing with services which may include but are not limited to health-related care, personal care and assistance with instrumental activities of daily living to six or more tenants a facility that houses a program that are is certified or seeking certification by the department of elder affairs or voluntarily accredited

pursuant to the provisions of Iowa Code Supplement section 231C.3 or that has been identified by the department of inspections and appeals as a facility housing a program which requires certification pursuant to Iowa Code Supplement section 231C.3 and is not currently certified.

"Existing assisted living facility" is means an assisted living facility operating on or before June 30, 1997, or which was in use on or before June 30, 1997, in another category or categories of state-licensed, long-term residential care facilities and was converted after that date to use as an assisted living facility which has been in continual operation since May 31, 2004, or before.

"New assisted living facility" is means an assisted living facility which begins operation on or after July 1, 1997, and was not in operation prior to July 1, 1997, in any category of state-licensed, long-term care facility June 1, 2004.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

**5.626(2)** New assisted living facilities. The standard "NFPA 101, Life Safety Code, 2003 edition, Chapter 22 32, "New Residential Board and Care Occupancies," 1994 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing new assisted living facilities. , with the following deletion:

Delete the definition of "Residential board and care occupancy" from Section 22-1.3.

**5.626(3)** Existing assisted living facilities. The standard "NFPA 101, Life Safety Code, 2003 edition, Chapter 23 33, "Existing Residential Board and Care Occupancies," 1994 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing existing assisted living facilities. in existing apartments and in those buildings that are converted from other classifications of state-licensed, long-term residential care facilities with the following deletion:

Delete the definition of "Residential board and care occupancy" from Section 23-1.3.

**5.626(4)** Alternative requirements. In lieu of complying with the requirements established in subrule 5.626(2) or 5.626(3), an assisted living facilities facility may alternatively comply with the requirements established in this subrule, if it meets the respective qualifications stated for the alternative requirement.

a. An assisted living facility that begins operation on or after September 11, 2003, or that received plan approval for initial construction or for its most recent addition or renovation or remodeling project on or after March 11, 2003, was initially approved by the fire marshal on the basis of compliance with the requirements of the 2000 edition of the Life Safety Code or that is located within or adjacent to a licensed health care facility required to comply with applicable provisions of the 2000 edition of the Life Safety Code may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition, Chapter 32, in lieu of compliance with the requirements established in subrule 5.626(2). If the facility was initially approved on the basis of compliance with Chapter 32, "New Residential Board and Care Occupancies," the facility shall continue to comply with the provisions of that chapter. A facility that was initially approved by the fire marshal on the basis of compliance with Chapter 33, "Existing Residential Board and Care Occupancies," may continue to comply with that chapter as long it is in continuous operation and does not undergo major renovation or re-

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*modeling. A facility that was initially approved on the basis of compliance with Chapter 33 and whose operation is not continuous or that undergoes major renovation or remodeling shall comply with Chapter 32.*

*b. An assisted living facility that begins operation prior to September 11, 2003, or that received plan approval for initial construction or for its most recent addition or renovation or remodeling project prior to March 11, 2003, may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition, Chapter 33, in lieu of compliance with the requirements established in subrule 5.626(3).*

*b. An assisted living facility that was certified prior to July 1, 1997, and that has continuously operated under that certification since July 1, 1997, may comply with the requirements of NFPA 101, Life Safety Code, 1994 edition, Chapter 23, "Existing Residential Board and Care Occupancies."*

*c. An assisted living facility that was certified on or after July 1, 1997, and before June 1, 2004, and that has continuously operated under that certification since before June 1, 2004, may comply with the requirements of NFPA 101, Life Safety Code, 1994 edition, Chapter 22, "New Residential Board and Care Occupancies."*

**5.626(5) Evacuation capability.** *For any provision of subrules 5.626(1) through 5.626(4) which is contingent upon evacuation capability, facilities may:*

*a. Comply with requirements for an evacuation capability rating of "impractical."*

*b. Comply with requirements which are contingent upon evacuation ratings of "slow" or "prompt," provided that the residents and staff of the facility have undergone evacuation rating evaluations performed by a health care professional and that all residents and staff are rated capable of "slow" or "prompt" evacuation, respectively. The evacuation capability ratings shall be updated each time a new resident arrives at the facility, a new staff person is assigned to the facility, or the physical condition or capacity for mobility of a resident or staff member changes significantly. Evacuation capability ratings shall be performed at the expense of the facility and any records supporting the ratings shall be made available to a fire inspector or personnel of the department of inspections and appeals upon request.*

This rule is intended to implement Iowa Code Supplement section 231C.4.

[Filed 3/25/04, effective 6/1/04]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/14/04.

## ARC 3298B

### REVENUE DEPARTMENT[701]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.22 and 421.17(19), the Department of Revenue hereby adopts amendments to Chapter 5, "Public Records and Fair Information Practices," Chapter 6, "Organization, Public Inspection," Chapter 8, "Forms and Communications," Chapter 17, "Exempt Sales," Chapter 26, "Sales and Use Tax on Services," Chapter 34, "Vehicles Subject to Registration," and Chapter 86, "Inheritance Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 17, p. 1420, on February 18, 2004, as **ARC 3184B**.

Items 1 through 5 amend subrules 5.13(2), 5.14(6), 6.1(1), 6.1(3), and 8.2(2) and rescind subrule 8.4(2) to implement 2003 Iowa Acts, Senate File 453, sections 63 through 121, and 2003 Iowa Acts, Senate File 458, section 142, which provide that effective July 1, 2003, the Iowa Lottery ceased to be a division of the Department of Revenue and became an independent authority as a charter agency. These amendments update various provisions related to the Department and reflect that the State Financial Management Division was moved to the Department of Administrative Services.

Item 6 amends subrule 17.9(1) to implement 2003 Iowa Acts, House File 624, sections 1 and 4, which amends the term "livestock" and adds a definition of "farm deer" for the purpose of exemption from Iowa sales and use tax to include whitetail deer and mule deer, but not free-ranging whitetail deer and mule deer.

Item 7 amends subrule 26.8(4) to implement 2003 Iowa Acts, Senate File 458, section 126, to provide that fees charged by a financial institution to a noncustomer for transactions involving point of sales, service charge or access to an automated teller machine are not subject to Iowa sales or use tax.

Item 8 amends subrule 34.5(9) to implement 2003 Iowa Acts, Senate File 458, section 127, to provide that the transfer of a vehicle subject to registration from one corporation to another corporation may be exempt from Iowa use tax if certain criteria are met.

Item 9 amends rule 701—86.1(450) to implement 2003 Iowa Acts, Senate File 366, sections 1 and 2, by amending the definition of what constitutes a taxable estate and adding a definition of "stepchild."

Item 10 amends paragraph 86.2(2)"d" to implement 2003 Iowa Acts, Senate File 366, section 1, to provide a reference for a new definition of "stepchild."

Item 11 amends paragraph 86.5(7)"d" to implement 2003 Iowa Acts, Senate File 366, section 3, to change the date on which property of an estate is valued. Previously, property of an estate was valued at the date of death of the decedent. With this amendment, for estates with decedents dying on or after July 1, 2003, the transferred property of items that must be included in an estate will be valued on the date of transfer.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective May 19, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 421.17, 422.45(5), 422.72, 423.4(4), 423.4(9) and 423.4(16); Iowa Code Supplement sections 10.1(14), 170.1, 422.45(65), 423.4(10) and 450.1 to 450.3; Iowa Code chapters 450A, 450B and 451; and 2003 Iowa Acts, chapter 178, sections 66 through 121.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [5.13(2), 5.14(6), 6.1(1), 6.1(3), 8.2(2), 8.4(2), 17.9(1), 26.8(4), 34.5(9), 86.1, 86.2(2), 86.5(7)] is be-

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ing omitted. These amendments are identical to those published under Notice as **ARC 3184B**, IAB 2/18/04.

[Filed 3/26/04, effective 5/19/04]  
[Published 4/14/04]

[For replacement pages for IAC, see IAC Supplement 4/14/04.]

## ARC 3297B

### REVENUE DEPARTMENT[701]

#### Adopted and Filed

Pursuant to the authority of Iowa Code chapter 17A and section 421.17(19), the Department of Revenue hereby adopts amendments to Chapter 108, "Local Option School Infrastructure Sales and Service Tax," and adopts a new Chapter 109, "New School Infrastructure Local Option Sales and Services Tax—Effective On or After April 1, 2003, Through Fiscal Years Ending December 31, 2022," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 17, p. 1424, on February 18, 2004, as **ARC 3177B**.

Item 1 amends 701—Chapter 108 to clarify that the chapter governs school infrastructure local option sales and service taxes that had been voted on and approved prior to April 1, 2003.

Item 2 adopts 701—Chapter 109 to implement Iowa Code Supplement section 422E.3A [2003 Iowa Acts, Senate File 445, and House File 683, sections 20 to 25] to provide a new distribution of school infrastructure local option sales and services tax for jurisdictions that vote on and approve the tax on or after April 1, 2003. This tax is set to automatically repeal on December 31, 2022.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective May 19, 2004, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code Supplement sections 422E.1 to 422E.3, 422E.3A, 422E.4 and 422E.6.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 108 preamble; Ch 109] is being omitted. These amendments are identical to those published under Notice as **ARC 3177B**, IAB 2/18/04.

[Filed 3/26/04, effective 5/19/04]  
[Published 4/14/04]

[For replacement pages for IAC, see IAC Supplement 4/14/04.]

## ARC 3296B

### UTILITIES DIVISION[199]

#### Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 474.5, 476.1, 476.2, and 476.4, on March 18, 2004, the Utilities Board

(Board) issued an order in Docket No. RMU-03-11, In re: Intrastate Access Service Charges, "Order Adopting Amendments." In the order, the Board adopted amendments to 199 IAC 22.14(2)"d"(1) relating to access charges.

The Board proposed these amendments in a rule making commenced on July 18, 2003. Notice of Intended Action was published in IAB Vol. XXVI, No. 3 (8/6/03) p. 203, as **ARC 2680B**.

These amendments to subparagraph 22.14(2)"d"(1) better reflect the current application of the carrier common line charge (CCLC) by rate-regulated incumbent local exchange carriers (ILECs) and require competitive local exchange carriers (CLECs) that choose to concur with the Iowa Telephone Association (ITA) Access Service Tariff No. 1 and that offer service in exchanges where the ILEC access rate is lower than the ITA access tariff rate to remove the three-cent CCLC rate element from their access tariffs in accordance with the Board's decision In re: FiberComm L.L.C., et al., v. AT&T Corp., Docket No. FCU-00-3.

A summary of the comments filed and the amendments adopted can be found in the Board's order located on the Board's Web site, [www.state.ia/iub](http://www.state.ia/iub), or in hard copy in the Board's Record Center, 350 Maple Street, Des Moines, Iowa 50319. Based upon the comments, the Board determined that certain revisions should be made to the proposed amendments. These revisions do not substantively change the amendments and are within the scope of the August 6, 2003, Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 17A.4, 474.5, 476.1, 476.2, and 476.4.

These amendments will become effective May 19, 2004.

The following amendments are adopted.

Amend paragraph **22.14(2)"d"** as follows:

d. All intrastate access tariffs shall ~~comply with~~ *incorporate* the following:

(1) Carrier common line charge. The rate for the intrastate carrier common line charge shall be three cents per access minute or fraction thereof for both originating and terminating segments of the communication, *unless a different rate is required by numbered paragraphs "1" and "2."* The carrier common line charge shall be assessed to exchange access made by any interexchange telephone utility, including resale carriers. In lieu of this charge, interconnected private systems shall pay for access as provided in 22.14(1)"b."

1. *Rate-regulated local exchange utility intrastate access service tariffs shall include the carrier common line charges approved in the rate-regulated local exchange utility's price regulation plan or as otherwise approved by the board.*

2. *A competitive local exchange carrier that concurs with the Iowa Telephone Association (ITA) Access Service Tariff No. 1 and that offers service in exchanges where the incumbent local exchange carrier's intrastate access rate is lower than the ITA access rate shall deduct the carrier common line charge from its intrastate access service tariff.*

(2) through (7) No change.

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